

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
NORTHERN ILLINOIS GAS COMPANY )  
d/b/a NICOR GAS COMPANY, )  
 )  
 ) No. 08-0363  
 )  
Proposed general increase in )  
natural gas rates. )

Chicago, Illinois  
November 19, 2008

Met pursuant to notice at 9:00 a.m.

BEFORE :

MS. CLAUDIA SAINOT, D. ETHAN KIMBEL and  
MS. BONITA BENN, Administrative Law Judges.

1        APPEARANCES:

2        SONNENSCHN, NATH & ROSENTHAL, LLP, by  
3        MR. JOHN E. ROONEY,  
4        MR. PHILLIP A. CASEY  
5        MR. THOMAS ANDREOLI  
6        MS. ANNE MITCHELL and  
7        MS. STEPHANIE GLOVER  
8        233 South Wacker Drive, Suite 7800  
9        Chicago, Illinois 60606  
10       -and-  
11       MR. NEIL MALONEY  
12       1844 Ferry Road  
13       Naperville, Illinois 60563  
14       -and-  
15       CHICO & NUNES, P.C., by  
16       MR. JERRY D. BROWN  
17       33 West Wacker Drive, Suite 1650  
18       Chicago, Illinois 6060  
19       Appearing for Nicor;

20       McGUIREWOODS, LLP, by  
21       MR. MARK McGUIRE and  
22       MR. BLAIR HANZLIK  
23       77 West Wacker Drive, Suite 4100  
24       Chicago, Illinois 60601  
25       Appearing for CNE;

26       DLA PIPER, LLP, by  
27       MR. CHRISTOPHER J. TOWNSEND  
28       MR. CHRISTOPHER N. SKEY  
29       203 North LaSalle Street, Suite 1900  
30       Chicago, Illinois 60601  
31       Appearing for Interstate Gas Supply of  
32       Illinois;

33       LUEDERS, ROBERTSON & KONZEN, by  
34       MR. ERIC ROBERTSON  
35       P.O. Box 735  
36       1939 Delmar Avenue  
37       Granite City, Illinois  
38       Appearing for the IIEC;

1 APPEARANCES: (CONT'D)

2 MS. KAREN LUSSON  
3 MS. KRISTIN MUNSCH and  
4 MR. ELIAS MOSSOS  
100 West Randolph Street, Suite 1100  
Chicago, Illinois 60601  
Appearing for the People of the State of  
Illinois;

6 MS. JANICE VON QUALEN and  
7 MS. JENNIFER LIN  
160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601  
Appearing for Staff;

9  
10 EIMER STAHL, by  
MR. JONATHAN M. WIER  
224 South Michigan Avenue, Suite 1100  
Chicago, Illinois 60604  
(312) 660-7618  
Appearing for Vanguard Energy.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>			
3	JEFF MAKHOLM								
4		435	438						
5	DIANNA HATHHORN								
6		448	458					470	
7	SHEENA KNIGHT-GARLISCH								
8		472	476						
9			480						
10	PETER LAZARE								
11		515	519	538	539				
12	DAVID BRIGHTWELL								
13		544	547						
14			565						
15			589					606	
16	NEIL ANDERSON								
17		625							
18									
19									
20									
21									
22									

1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
	STAFF		
3	#2		447
	#2.0,2.04 a-D 15.0		450
4	#15.1 - 15.5		450
	#6.01,6.0C,6.0,19.0C		476
5	#19.0-19.01-19.08		476
	#7.0,20.0	518	
6	#13.0,25.0&25.1		547
	#1.0,1.01-1.07		613
7	#A-F, 14.0,14.01-14.07		613
	#3.0,3.01-3.05		614
8	#3.05,16.0,16.01,16.02		614
	#4.0R,4.01-4.04		615
9	#5.0,18.0C		617
	#8.0,21.1 & 21.0		618
10	#9.0&22.0		619
	#10.0&23.0		620
11	#11.0FR,24.0R2		622
	#12.0		623
12	#3		624
	NICOR		
13	#1	488	
	#2	489	
14	#3	492	
	#4	499	
15	#1-4		513
	#6.0,6.1,21.0,		611
16	#21.1-21.6		611
	#5		633
17	CUB		
	#1.0,1.01 & 2.0		515
18	IIEC		
	#1.0, 1.1-1.6,		
19	#2.1-2.6,2.4-2.5		604
	ELPC		
20	#1.0,2.0		605
	ENE		
21	#1		610
	VES		
22	#1.0,2.0		628

1 JUDGE SAINSOT: By the authority vested in me by  
2 the Illinois Commerce Commission, I call Docket  
3 No. 08-0363, it is the matter of the Northern  
4 Illinois Gas Company, doing business as Nicor Gas,  
5 and it concerns the proposed general increase in  
6 rates and revisions to other terms and conditions of  
7 service.

8 Will the parties identify themselves  
9 for the record please.

10 MR. ROONEY: Your Honor, on behalf of Northern  
11 Illinois Gas Company, d/b/a Nicor Gas, John Rooney  
12 Tom Andreoli, Phil Casey of the firm Sonnenschein,  
13 Nath, Rosenthal, LLP, 233 South Wacker Drive, Suite  
14 7800.

15 MR. BROWN: On behalf of Northern Illinois Gas  
16 Company, Jerry Brown of the firm Chico & Nunes, P.C.,  
17 33 West Wacker Drive, Suite 1650 Chicago, Illinois  
18 60606.

19 MR. MALONEY: Also, on behalf of Northern  
20 Illinois Gas Company Neil Maloney, Assistant General  
21 Counsel, 1844 Ferry Road, Naperville, Illinois 60563.

22 MS. VON QUALEN: Jan Von Qualen and Jennifer

1 Lin on behalf of the staff witnesses of the Illinois  
2 Commerce Commission, 527 East Capitol Avenue,  
3 Springfield, Illinois 62701.

4 MR. HANZLIK: Mark McGuire and Blair Hanzlik of  
5 McGuire Woods, LLP, 77 West Wacker Drive, Suite 4400  
6 Chicago, Illinois 60601.

7 MR. SKEV: Good morning, your Honor.

8 On behalf of Interstate Gas Supply of  
9 Illinois Inc., Christopher Skev and Christopher  
10 Townsend and Amanda Jones, of the law firm of DLA  
11 Piper, LLP, US, 203 North LaSalle, Chicago, Illinois  
12 60601.

13 MS. MUNSCH: Kristin Munsch and Karen Lusson,  
14 the People of the State of Illinois, Office of the  
15 Attorney General, 100 West Randolph Street, 11th  
16 Floor, Chicago, Illinois 60601.

17 MS. SODERNA: On behalf of the Citizen's  
18 Utility Board Julie Soderna, 309 West Washington,  
19 Suite 800, Chicago, Illinois 60606.

20 MR. ROBERTSON: On behalf of the Illinois  
21 Industrial Energy Consumers, Eric Robertson, Peters  
22 Robertson & Townsend, P.O. Box 735, 1939 Delmar,

1 Granite City, Illinois 62040. Vanguard energy  
2 services.

3 MR. WIER: On behalf of Vanguard Energy, John  
4 Wier with Eimer Stahl, 224 South Michigan,  
5 Suite 1100, 60604.

6 JUDGE SAINSOT: Are there any further  
7 appearances?

8 (No response.)

9 Okay. Our first witness today is  
10 Mr. Makholm; is that correct?

11 MR. ANDREOLI: Yes, your Honor.

12 JUDGE SAINSOT: You can proceed.

13 MR. ANDREOLI: Tom Andreoli, your Honor.

14 Nicor Gas calls Dr. Jeff Makholm.

15 (Witness sworn.)

16 Thank you, your Honor.

17

18

19

20

21

22



1                               JEFF MAKHOLM,  
2     called as a witness herein, having been first duly  
3     sworn, was examined and testified as follows:  
4                               DIRECT EXAMINATION  
5                               BY  
6                               MR. ANDREOLI:  
7               Q     Good morning, Dr. Makholm.  
8               A     Good morning.  
9               Q     Would you please state and spell your full  
10     name for the record.  
11              A     My name is Jeff, middle initial D,  
12     Makholm; M-a-k-h-o-l-m.  
13                              My address is 200 Clariden Street,  
14     Boston, Massachusetts 02116.  
15              Q     Dr. Makholm, do you have in front of you a  
16     document marked as your direct testimony in this case  
17     Nicor Gas Exhibits 10.0 to 10.16?  
18              A     Yes.  
19              Q     That document contains two corrected  
20     exhibits, 10.15 and 10.16; is that correct?  
21              A     Yes.  
22              Q     Was that document prepared by you or and/or

1 under your direction?

2 A Yes.

3 Q Dr. Makholm, do you have in front of you a

4 document marked as your rebuttal testimony in this

5 proceeding marked as Nicor Gas Exhibits 25.0 to

6 25.16.

7 A Yes.

8 Q Was that document prepared by you and/or

9 under your direction?

10 A Yes.

11 Q And, Dr. Makholm, do you have in front of

12 you a document marked as your surrebuttal testimony

13 in this proceeding identified as Nicor Gas

14 Exhibit 44.0?

15 A Yes.

16 Q And was that document prepared by you

17 and/or under your direction?

18 A Yes.

19 Q Your Honor, all of these documents have

20 been submitted supported by affidavit, and I would at

21 this time move to submit them into evidence?

22 JUDGE SAINSOT: Any objection?

1 (No response.)

2 Hearing no objection, your motion is  
3 granted, Counsel.

4 And Mr. Makholm's testimony and  
5 supporting exhibits, which for the record are Nicor  
6 Exhibits 10.0 and 10.1 through 10.16.

7 Am I right that only 10.15 and 16 are  
8 corrected.

9 MR. ANDREOLI: That's correct, your Honor.

10 JUDGE SAINSOT: Okay. And Nicor Exhibits 24  
11 and Attachments 24.1 through 24.8 and Nicor  
12 Exhibit 43.0 and attachments 43.1 and 43.2 are  
13 entered into evidence.

14 MR. ANDREOLI: Your Honor, if I'm correct, I  
15 think the numbering on the rebuttal testimony and  
16 surrebuttal testimony is Exhibit 25.0 to 25.16 and on  
17 the surrebuttal testimony Exhibit 34.

18 JUDGE SAINSOT: Okay. Thanks for pointing that  
19 out.

20 MR. ANDREOLI: Your Honor, I didn't note  
21 before, Exhibit 25.0 has been filed in a corrected  
22 form.

1 JUDGE SAINSOT: Okay. So for the record, the  
2 rebuttal and surrebuttal testimony that will be  
3 admitted are 25.0 with Attachments 25.1 through 25.16  
4 and 25.16 is corrected?

5 MR. ANDREOLI: Yes, your Honor -- no, no, 25.0  
6 is corrected.

7 JUDGE SAINSOT: Okay 25.0 is corrected.

8 And the surrebuttal testimony exhibit  
9 is 44.0. Thank you.

10 MR. ANDREOLI: Dr. Makholm is available for  
11 cross, your Honor.

12 JUDGE SAINSOT: Okay.

13 CROSS-EXAMINATION

14 BY

15 MS. VON QUALEN:

16 Q I have a few questions.

17 Good morning, Dr. Makholm.

18 A Good morning.

19 Q I'm Jan Von Qualen. I represent the staff  
20 witnesses in this proceeding.

21 Dr. Makholm, I would like to turn your  
22 attention to your Exhibit 25.0, and I'm looking at

1 Pages 22 and 23, Lines 498 to 502?

2 A In the corrected version?

3 Q I'm actually looking at the former version,  
4 but I don't believe this has changed?

5 A Okay. I will do go to both.

6 Yes, thank you.

7 Q Dr. Makholm, do you see that it says  
8 Ms. Kight-Garlsch suggested a 25-basis point  
9 downward adjustment to her recommended cost of equity  
10 for Nicor Gas on the basis of her premise that Nicor  
11 Gas' equity is less risky than that of a proxy group  
12 that's signaled by two things; one, S&P bond rating  
13 differences; and two, S&P business profile scores for  
14 Nicor Gas versus the proxy group?

15 A Yes.

16 Q And do you see further on Lines 505 through  
17 506 that you state Ms. Kight-Garlsch made an  
18 adjustment that goes beyond what would reflect  
19 reasonable investor expectation?

20 A Yes.

21 Q Would it be fair for me to say that on  
22 Lines 508 through 515, you inventory the bases for

1     your criticism of Ms. Kight-Garlisich?

2             A     I think in the corrected, it's 509 through  
3     516, but, yes, close enough.

4             Q     Thank you.

5                     In looking at Lines 517 through 519,  
6     you reach the conclusion Ms. Kight-Garlisich has taken  
7     no care with her 25-basis point adjustment.  She  
8     simply found a convenient adjustment without a valid  
9     conceptual foundation.

10                    Do you see that?

11            A     Yes.

12            Q     And then looking at Ms. Kight-Garlisich's  
13     testimony, Exhibit 6.

14                    Do you have that with you today?

15            A     No.

16            MS. VON QUALEN:  May I approach the witness?

17            JUDGE SAINSOT:  Yes.

18            MR. ANDREOLI:  Counsel, are we looking at the  
19     direct rebuttal?

20            MS. VON QUALEN:  Exhibit 6.

21            JUDGE SAINSOT:  What page number?  This is  
22     Staff Exhibit 6?

1 MS. VON QUALEN: Staff Exhibit 6, and I'm  
2 looking at Pages 21 through 25.

3 JUDGE SAINSOT: Okay.

4 BY MS. VON QUALEN:

5 Q Did you find those pages?

6 A Yes. 21 through 25, you said?

7 Q Yes.

8 And would you agree with me that that  
9 is where Ms. Kight-Garlich addresses the downward  
10 adjustment?

11 A Yes.

12 Q Would you please identify for me where  
13 Ms. Kight-Garlich discusses S&P bond rating  
14 differences.

15 A I see on Page 21 the references to Moody's,  
16 not S&P. And in that respect, I may stand corrected.

17 Q Thank you.

18 Would you agree that  
19 Ms. Kight-Garlich never mentions S&P business  
20 ratings or credit profiles?

21 A Well, let me look through. I don't see S&P  
22 on those pages, but I see a number of references to

1     Moody's.    So with respect to S&P, I just don't see  
2     it.

3             Q     So isn't it true that Ms. Kight-Garlich  
4     does not use S&P bond ratings or S&P business  
5     profiles in her determination of a difference in risk  
6     between the proxy group and Nicor Gas?

7             A     I think I misspoke.   I should have said  
8     Moody's.

9             Q     Would you agree with me that Moody's does  
10    not have profile scores?

11            A     Profile scores is a product of S&P.   I  
12    don't think Moody's has any product with that name;  
13    although, it does generally the same thing, as does  
14    Fitch.   They all do the same thing.

15            Q     Dr. Makholm, you testified on behalf of  
16    Nicor Gas in Nicor's last rate case Docket No.  
17    04-0779, correct?

18            A     Yes.

19            Q     Do you have a copy of your testimony from  
20    that proceeding with you today?

21            A     No.

22            MR. ANDREOLI:   Counsel, I may have a copy.



1 MS. VON QUALEN: I have a copy right here, but  
2 if you have a copy to look at, that would be helpful.

3 MR. ANDREOLI: Okay.

4 BY MS. VON QUALEN:

5 Q Dr. Makholm, I'm showing you a copy of your  
6 testimony from the 04-0779 case, and I'm also handing  
7 you what I've marked as Staff Makholm Cross-Exhibit  
8 1, which is just a couple pages from that testimony.

9 MR. ANDREOLI: Thank you, Counsel.

10 BY MS. VON QUALEN:

11 Q I would like you to -- do you recognize  
12 that as your rebuttal testimony from 04-0779?

13 A Yes.

14 Q I would like you to turn to Pages 8 through  
15 10, which are the pages included in the smaller  
16 subset that I handed you and marked as Staff Makholm  
17 Cross-Exhibit 1?

18 A Yes.

19 Q And I'm looking at Lines 226 through 279.

20 Would you agree with me that that  
21 testimony is responding to Staff Witness  
22 Mr. McNally's recommended cost of equity in that

1 proceeding?

2 A That's correct.

3 Q Would you agree with me that Mr. McNally's  
4 recommendation in 04-0779 was not based upon the same  
5 rationale as Ms. Kight-Garlisches analysis in the  
6 current proceeding?

7 A By "same," do you mean exact same or same  
8 in thrust.

9 Q I mean the same as in Ms. Kight-Garlisches  
10 relied upon Moody's, whereas Mr. McNally relied upon  
11 Standard & Poors?

12 A I would call that in the same thrust;  
13 although, not exactly the same source.

14 Q Would you agree with me that Page 23, Line  
15 503 through Page 24, Line 539 in your rebuttal  
16 testimony from the previous Nicor rate case -- this  
17 is Staff Makholm Cross-Exhibit 1?

18 A Cross-exhibit 1 only has Pages 8 through  
19 10, I believe.

20 Q I'm sorry. That cite was to this case.

21 So your testimony in this case.

22 A Okay. I want to give you your things back.

1 Q Okay.

2 A Now, we are back to my testimony?

3 Q Yes.

4 JUDGE SAINSOT: Is this his rebuttal testimony?

5 MS. VON QUALEN: This is his rebuttal

6 testimony, Exhibit 25.

7 THE WITNESS: As corrected?

8 MS. VON QUALEN: As corrected, Page 23,

9 Line 503.

10 MR. ANDREOLI: Counsel, because the document

11 that has been admitted is the corrected copy, I

12 understand you're working off the uncorrected copy, I

13 just suggest we take care with respect to the lines

14 that are going into the record. There is only one

15 word on --

16 JUDGE SAINSOT: You really should be able to

17 identify it from the whole page. These things are

18 double-spaced, so you can just refer to the page.

19 MS. VON QUALEN: Okay.

20 BY MS. VON QUALEN:

21 Q Page 23, starting with the question, "Is

22 that a problem" through Page 24 ending with

1 "standpoint of financial theory or practice --

2 A Yes.

3 Q -- is identical to Page 8, Line 231 through

4 Page 10, Line 279 of the testimony you filed in

5 Docket No. 04-0779?

6 A No, that's not identical.

7 Q Is it substantially identical?

8 A It's substantially the same thrust of

9 testimony, yes.

10 Q Could you identify for me what the

11 differences are.

12 A Well, I'm talking about Ms. Kight-Garlis

13 in this case. I was talking about the same sort of

14 adjustment done by her predecessor in the last case.

15 MS. VON QUALEN: Thank you, Dr. Makholm.

16 I have no further questions.

17 I will come and get my exhibits back.

18 Judge, I would like to move into

19 admission for evidence of Staff Makholm

20 Cross-Exhibit 1.

21 JUDGE SAINSOT: Any objection?

22 MR. ANDREOLI: No, objection, your Honor.

1 JUDGE SAINSOT: Okay. You're motion is granted,  
2 Counsel. Just note that it's Staff Exhibit Cross 2  
3 for the record.

4 Okay. We are going to call it Staff  
5 Cross-Exhibit 2.

6 You're motion is granted, Counsel. And  
7 it's admitted into evidence.

8 (Whereupon, Staff Exhibit  
9 Cross 2 was admitted into  
10 evidence.)

11 MR. ANDREOLI: I have no redirect, your Honor.

12 JUDGE SAINSOT: I just want to make sure that  
13 Staff is done with this witness.

14 Is that it for you?

15 MS. VON QUALEN: Yes.

16 JUDGE SAINSOT: Okay. Anyone else? I thought  
17 there was someone else on the list.

18 MR. ROONEY: Your Honor, the list I sent out  
19 last night, the Citizens Utility Board waived cross  
20 of Dr. Makholm.

21 JUDGE SAINSOT: Okay. That's it for you  
22 Dr. Makholm.

1 (Witness excused.)

2 The next witness is Ms. Hawthorn.

3 MS. LIN: Judge, at this time the Staff calls

4 Ms. Hawthorn.

5 JUDGE SAINSOT: Okay. You're all ready,

6 Ms. Hawthorn, I can tell.

7 (Witness sworn.)

8 DIANNA HATHHORN,

9 called as a witness herein, having been first duly

10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MS. LIN:

14 Q Good morning, Ms. Hathhorn, could you

15 please state your name, spelling your first and last

16 name for the reporter please.

17 A Diana Hathhorn; D-i-a-n-n-a;

18 H-a-t-h-h-o-r-n.

19 Q Ms. Hathhorn, do you have in front of you

20 two pieces of testimony that you caused to be filed

21 in this docket?

22 A Yes, I do.

1           Q     And are those pieces of testimony  
2     identified as ICC Staff Exhibit 2.0 with attached  
3     Exhibit Schedules 2.1, 2.04, in addition to  
4     Attachments A and D as your direct testimony?

5           A     Yes.

6           Q     And do you also have in front of you  
7     rebuttal testimony, which has been identified as  
8     Staff Exhibit 15.0 with attached exhibit Schedules  
9     15.01 through 15.05 and attachments A through F?

10          A     Yes, I do.

11          Q     And if these questions were asked to you  
12     today, would those answers be the same?

13          A     Yes, they would.

14          Q     Are they true and accurate to the best of  
15     your knowledge?

16          A     Yes, they are.

17          MS. LIN: Judge, at this time, I would move for  
18     admission into evidence attachments A through D as  
19     the Direct Testimony of Diana Hathhorn in addition to  
20     Staff Exhibit 15.0 with attached Schedules 15.01  
21     through 15.05 and Attachments A through F as rebuttal  
22     testimony of Ms. Hathhorn.

1 JUDGE SAINSOT: Any objection?

2 MR. ROONEY: (Shaking head side to side.)

3 JUDGE SAINSOT: Okay. That being the case, your  
4 motion is granted, Ms. Lin.

5 Ms. Hathhorn's testimony is entered  
6 into evidence. And that consists of Staff Exhibit  
7 2.0, 2.01, 2.04 and Attachments A through D, as well  
8 as Staff Exhibit 15.0 and 15.1 through 15.5 and  
9 Attachments A through F.

10 MS. LIN: Thank you.

11 (Whereupon, Staff Exhibits 2.0,  
12 2.01, 2.04, Attachments A  
13 through D, Staff Exhibit 15.0  
14 and 15.1 through 15.5 and  
15 Attachments A through F were  
16 admitted into evidence.)

17 CROSS-EXAMINATION

18 BY

19 MS. MUNSCH:

20 Q Good morning, Ms. Hathhorn. My name is  
21 Kristin Munsch on behalf of the People of the State  
22 of Illinois.



1           A     Good morning.

2           Q     I just have a couple quick questions, I  
3 think, for you.

4                     If you could turn to Page 12 of your  
5 rebuttal testimony.

6           A     Okay.

7           Q     Lines 255 to 262, you discuss a proposed  
8 payroll adjustment of AG/CUB Witness David Effron; is  
9 that correct?

10          A     That's correct.

11          Q     As a general matter, would you agree that  
12 the Company's test year payroll expense is based on  
13 the forecast that Company makes, this includes the  
14 authorized -- forecast of the authorized number of  
15 employees in the test year of 2009?

16          A     Could you repeat the question.

17          Q     Would you agree, as a general matter, that  
18 the Company basis its test year forecast for the test  
19 year 2009 on the forecast of the number of authorized  
20 employees?

21          A     Yes, that's correct.

22          Q     And you state when you're discussing

1 Mr. Effron's proposed adjustment that in your review  
2 of the Company's testimony in this case and  
3 supporting work papers, as well as additional  
4 discovery, you reached a conclusion that the  
5 Company's position on its test year payroll expense  
6 is reasonable; is that correct?

7 A Yes, that's my testimony.

8 Q Did your review of additional discovery  
9 review of responses to other parties data requests  
10 besides staff?

11 A Yes, I looked at Mr. Effron's.

12 Q So that would include a review of the  
13 Company's response to AG Data Response 8.15?

14 A I can't think of what that DR is, as I sit  
15 here, but I know he was reviewing all his DRs as they  
16 came in.

17 Q On Pages 8 and 9 of your rebuttal  
18 testimony, you addressed the Company's uncollectible  
19 expenses:

20 You proposed lowering the  
21 uncollectible expense percentage to 2.02 percent just  
22 as you did in your direct testimony; is that correct?

1           A     Yes.

2           Q     And you also respond again to a proposed  
3     adjustment of AG/CUB Witness David Efron; is that  
4     correct?

5           A     Yes, that's correct.

6           Q     And you state that you agree with  
7     Mr. Efron that an adjustment would be necessary; is  
8     that correct?

9           A     Yes.

10          Q     But you would disagree with the methodology  
11     that Mr. Efron used in arriving at his proposed  
12     adjustment; is that correct?

13          A     That's correct.

14          Q     And you expressed concern that Mr. Efron  
15     treated, I think as you characterized it, as a  
16     outlier, data from 2007; is that correct?

17          A     Yes.

18          Q     Did you review the schedule that Mr. Efron  
19     filed with his direct testimony, which was part of  
20     the AG Exhibit 1.1, Schedule C-2.2?

21          A     Yes.

22          Q     And would you agree that that showed an

1 average -- showed Mr. Effron's calculations, and it  
2 included data from 2005, 2006 and 2007?

3 A I'd have to look at it again.

4 Q I have a copy, if you would need it.

5 A Yeah.

6 Q Would you agree this shows data from 2005,  
7 2006, 2007 that Mr. Effron used in his calculations?

8 A Yes.

9 Q You participated in the most recent Ameren  
10 Illinois Utility rate cases, I believe you did,  
11 didn't you?

12 A I was the ALJ assistant. I wasn't a  
13 witness.

14 Q Okay. But you're familiar with that case?

15 A Yes.

16 Q And would you agree that in that case, the  
17 Company, AG and CUB proposed using a three-year  
18 average of net write-offs divided by revenues to  
19 calculate uncollectible expense?

20 A I'm not that familiar with that case.

21 Q Okay. Moving back to your testimony, the  
22 same spot slightly, I believe, Lines 191 through 194

1 continuing your response to Mr. Effron's adjustment.

2                   You said that Mr. Effron does not give

3 weight to the actual activity in 2008; is that

4 correct?

5           A     I said he appears to give no weight.

6           Q     He appears to give no weight.

7                   Attachment B in your direct testimony

8 is the response to a Staff Data Request DLH 15.03.

9           A     Did you say "B," as in boy.

10          Q     B, as in boy, yes.

11          A     To which testimony?

12          Q     This is to your direct testimony.

13                   I apologize.

14                   Attachment B includes a response to

15 Staff Data Request DLH 15.03, which shows updates to

16 the Company's forecast of uncollectibles expense and

17 net charge-offs; is that correct?

18          A     That's correct.

19          Q     This includes five months of actual data;

20 is that correct?

21          A     Yes.

22          Q     And this shows that the -- on this

1 response, it shows the actually charge-offs for the  
2 first five months of 16 million 859 thousand and 80  
3 dollars; is that correct?

4 JUDGE SAINSOT: Ms. Munsch, where is this?

5 MS. MUNSCH: It's actual forecasted charge net  
6 charge-off, Columns D and E.

7 THE WITNESS: That's what it says, yes.

8 BY MS. MUNSCH:

9 Q And this also showed that the actual  
10 revenues for the first five months, which is  
11 Column I, of 1 billion 903,547,054 dollars; is that  
12 correct?

13 A That's what it shows, yes.

14 Q Would you accept, subject to check, that if  
15 we were to take the actual charge-offs and do the  
16 calculation using the actual charge-offs as a  
17 percentage of actual revenues that the result would  
18 be approximately .89 percent?

19 A The 16 million over the 1.903?

20 Q Yes.

21 A Subject to check.

22 Q And would you also agree, subject to check,

1     that if we were to take, for instance, Mr. Effron's  
2     proposed rate of 1.80, which was based on a  
3     three-year average of actual charge-offs over actual  
4     revenues and include the additional five months of  
5     data that that would lower his average from 1.80?  
6     That it would drop it, subject to check, it would  
7     lower the average?

8           A     Could you say that again, what we'd be  
9     doing?

10          Q     We would be taking Mr. Effron's three-year  
11     calculation, which resulted in a rate of 1.80 and  
12     including this five months of actual data, including  
13     the rate that we just calculated, which was the rate  
14     of actual charge-offs over actual revenues.

15                    Would you agree, subject to check,  
16     that that would lower Mr. Effron's average?

17          A     I'm not sure.

18                    Wouldn't you also have to address in  
19     the five months of revenues?

20          Q     Right. Assuming -- yes. We would do  
21     exactly the calculation we just did.

22          A     So it would be a three-year average, plus

1 five more months.

2 Q Correct.

3 A I don't know how you would call -- I don't  
4 understand how that would be calculated for an annual  
5 rate of three-year average plus five months.

6 Q Okay. Thank you.

7 MS. MUNSCH: No further questions.

8 MR. ROONEY: Thanks, your Honor.

9 CROSS-EXAMINATION

10 BY

11 MR. ROONEY:

12 Q Good morning, Ms. Hathhorn.

13 John Rooney on behalf of Nicor Gas  
14 Company.

15 My questions are only going to relate  
16 to your rebuttal testimony. And in particular, your  
17 discussion of your proposed adjustment related to  
18 Nicor Energy Services billing, which is found on  
19 Pages 12 through 14. Okay?

20 A Okay.

21 Q As an initial matter, on Lines 281 through  
22 286 on Page 13, you identify the fact that the only



1 difference explained by the Company is that Nicor  
2 Solutions uses a different billing system than Nicor  
3 Services. There is a cite there and that using a  
4 different billing system is not sufficient to justify  
5 why Nicor Gas charges Nicor services, only fully  
6 distributed costs rather than a prevailing price for  
7 what appears to be the same billing services to Nicor  
8 Services, correct?

9 A Correct.

10 Q And based upon that fact that the Company  
11 has just, in your view, identified -- has only  
12 identified that fact, you're suggesting a proposed  
13 adjustment of increasing or imputing a 25-cent rate  
14 to bills for Nicor Services as opposed to the 11 --  
15 1112 cent charge that's being applied under fully  
16 distributed costs calculation, correct?

17 A Yes, that's correct.

18 Q Okay. And then by virtue of imputing that  
19 25 cent rate to the Nicor Services billing service  
20 per bill, that results in an upward adjustment of  
21 revenues by approximately 588,000, correct?

22 A Yes.

1           Q     And then that serves to offset revenue  
2 requirement by an equivalent amount?

3           A     Yes, that's correct.

4           Q     Now, the operating agreement that we are  
5 discussing here as attached to your rebuttal  
6 testimony is Attachment E, correct?

7                     I'm sorry. F, as in Frank?

8           A     Yes, it's Attachment F.

9           Q     Okay. And would you agree that the  
10 operating agreement applicable to Nicor Gas allows  
11 for Nicor Gas to provide billing services to its  
12 affiliates?

13          A     Yes, it does.

14          Q     And would you agree that the operating  
15 agreement allows Nicor Gas to charge for services  
16 provided to affiliates using either the prevailing  
17 price or a fully distributed cost of service if no  
18 prevailing price exists?

19          A     Yes, that's what it calls for.

20          Q     And in the operating agreement we're  
21 discussing here, that's an operating agreement that  
22 was approved by the Commission previously, correct?

1           A     Yes.

2           Q     With regard to your adjustment, would I be  
3     correct also that you are not claiming that the  
4     Company has incorrectly calculated a  
5     fully-distributed cost of providing billing service  
6     to Nicor Services?

7           A     That's correct.

8           Q     And if you want, I'd offer you to turn to  
9     Page 7 of that Attachment F, and cite you to  
10    Section 5.1, Subsection B, as in boy, little Roman i.  
11    Let me know when you're there?

12          A     I'm there.

13          Q     And would you agree with me that as  
14    described in the operating agreement that the  
15    prevailing price is charged for a service that is  
16    provided for sale to the general public; isn't that  
17    correct?

18          A     Yes.

19          Q     Now, when we're discussing this adjustment,  
20    we are talking about three companies; there's Nicor  
21    Gas, Nicor Solutions and Nicor Services, correct?

22          A     Yes, that's correct.

1           Q     I would like to turn to Nicor Solutions  
2     first.

3                         Would you agree with me that Nicor  
4     Solutions, with regard to this, the bills that are  
5     being -- the billing service that's being offered  
6     by -- strike that.

7                         Would you agree that with regard to  
8     Nicor Solutions that Nicor Solutions provides a fixed  
9     bill product?

10           A     Yes.

11           Q     Okay. And would you agree that the fixed  
12     bill product is a product that is in competition with  
13     products for gas commodity offered by customer select  
14     providers?

15           A     That's my understanding.

16           Q     And would you agree he that customer select  
17     suppliers are selling natural gas to customers within  
18     Nicor service territory?

19           A     Yes.

20           Q     And would you agree that customer select  
21     suppliers require customer consumption data from  
22     Nicor Gas in order to compute bill amounts?

1           A     I guess, I would agree to that. I hadn't  
2 really thought about what they required.

3           Q     In the course of preparing your  
4 cross-examination today, did you have reason to  
5 review the surrebuttal testimony of Mr. James Gorenz,  
6 Nicor Gas Exhibit 45.0?

7           A     Yes, I did.

8           Q     And would you agree that Nicor Gas is  
9 required to offer billing services to customer select  
10 suppliers?

11          A     I don't know if it's required or not.

12          Q     Okay. Would you agree that Nicor Solutions  
13 uses the same billing system that the Company's  
14 customer select suppliers use?

15          A     That's my understanding.

16          Q     Okay. And would you agree that Nicor  
17 Solutions was not charged an initial setup fee in  
18 order to begin billing its customers using the Nicor  
19 Gas billing system?

20          A     I probably have to check Mr. Gorenz'  
21 testimony to see if that's correct, assuming he  
22 talked about it.

1           Q     Well, maybe I'll help you here with this.

2           A     That would be great.

3           Q     If you turn to your testimony, Attachment

4     E, it's DLH 27.09.

5           A     Okay. I'm there.

6           Q     That last paragraph on the first page, it

7     discusses what Nicor Energy Services, which is the

8     other company, was required to pay.

9                     It does not discuss any payment that

10    Nicor Solutions had to pay as an initial startup cost

11    to begin billing its customers using Nicor Gas'

12    billing service; isn't that correct?

13          A     Which response are you on again?

14          Q     27.09. It's attached to your rebuttal

15    testimony as Attachment E, as in Edward?

16          A     Right.

17                     It discusses only how Nicor Energy

18    Services was charged for a set of costs.

19          Q     It also describes the fact that Nicor

20    Energy Services also is charged for ongoing

21    maintenance, programming expenses as they incur,

22    correct?

1           A     Yes.

2           Q     And the paragraph above speaks to Nicor  
3     Solutions.  And it does not identify any initial  
4     setup charge or ongoing maintenance charges  
5     associated with Nicor Solution's use of Nicor Gas'  
6     billing system, correct?

7           A     Yes.

8           Q     Now, let's turn to Nicor Services, would  
9     you agree that Nicor Services is engaged in selling  
10    heating ventilating and air conditioning, HVAC,  
11    maintenance and warranty services to its customers?

12          A     Yes.

13          Q     And as we just described, would you agree  
14    that the billing service that Nicor Gas provides  
15    Nicor Services is different from the service that is  
16    being offered to customer select suppliers and Nicor  
17    Solutions?

18          A     Well, the product is being sold by Nicor  
19    Solutions and Nicor Services are different.

20                   I don't know -- Nicor Gas, as I  
21    understand, is providing billing services to both  
22    companies for two different kinds of services that

1       they provide.

2               Q       Now, turning back to your Attachment E,  
3       which is the Company's response to DLH 27.09, that  
4       third paragraph.

5                       The fourth line of that DR response  
6       says:  "The billing system utilized for Nicor Energy  
7       Services is a different billing program within the  
8       customer care and billing system than the one that is  
9       utilized for customer select suppliers."

10                      Do you see that?

11               A       Actually, I'm not there yet.

12               Q       I'm sorry.  It's the third paragraph of the  
13       answer for 27.09, and it's the fourth line, the  
14       sentence beginning the start of the fourth line?

15               A       Okay.  I see that.

16               Q       And you have no reason --

17               A       Right.  I understand that's a different  
18       billing system, but I just understand that the  
19       service, it's still a billing service.

20               Q       It's a billing service, but would you have  
21       any basis to know or not know whether it's the same  
22       type of service that is being offered to the customer



1 select suppliers in Nicor Solutions?

2 A Well, in my testimony on Page 13 of my  
3 rebuttal testimony, I reference a response from Nicor  
4 where they kind of summarize the billing services  
5 that Nicor Gas provides to Services and Solutions,  
6 and they summarized it jointly as printing mailings,  
7 cash remittance, customer inquiry, and so that leads  
8 me to believe that the services since it's all  
9 summarized together, even though it uses two  
10 different computer systems for billing, this is kind  
11 of the same service.

12 Q Okay. Going back to Mr. Gorenz'  
13 surrebuttal testimony.

14 Do you have a copy of that with you.  
15 And I point you towards the top of Page 11?

16 JUDGE SAINSOT: And that's Nicor exhibit?

17 MR. ROONEY: 45.0, your Honor.

18 JUDGE SAINSOT: On the top of Page 11.

19 MR. ROONEY: Yes, Line 225 going through  
20 Line 238.

21 BY MR. ROONEY:

22 Q If you want to take a moment to read that.

1           A     Which line?

2           Q     Starting on Line 235 and going to Line 238.

3     Ready?

4           A     Yes.

5           Q     Do you have any basis to disagree with

6     Mr. Gorenz' statement on these lines?

7           A     No.

8           Q     With regard to the billing service that

9     Nicor Gas provides to Nicor Services, the HVAC

10    supplier, do you know whether Nicor Gas is obligated

11    to provide billing services to other providers of

12    HVAC maintenance services and warranties?

13          A     I don't know.

14          Q     Do you know whether Nicor Gas does, in

15    fact, offer billing services to other HVAC

16    maintenance and warranty providers?

17          A     I would think that if it doesn't, then it

18    would have a prevailing price, and that's what would

19    be charged to Nicor Services, so it can't be.

20          Q     Oo so you're agreeing with me that Nicor

21    isn't providing that service --

22          A     Right.

1           Q     -- to other HVAC-type suppliers?

2           A     Right.

3           Q     And in contrast, with regard to Nicor

4     Solutions, the Company is charging Nicor Solutions a

5     per bill rate that's based upon a tariff that the

6     Commission has approved, correct?

7           A     Yes.

8           Q     And with regard to that billing service,

9     that's a service that is also being offered to other

10    customer select suppliers, correct?

11          A     Yes.

12          MR. ROONEY:   Thank you.

13                    I have no further questions.

14                    Thank you, Ms. Hathhorn.

15          JUDGE SAINSOT:   Any redirect?

16          MS. LIN:   Judge, can I have a few minutes to

17    confer with my witness?

18          JUDGE SAINSOT:   Sure.

19                    I have a question of the AG.

20                    You had a schedule regarding

21    uncollectible accounts expense.  Is this going to be

22    admitted into evidence?

1           MS. MUNSCH:  It's already attached as part of  
2   his testimony.

3           JUDGE SAINSOT:  Okay.  Thanks.

4                        Would you like to take a 5-minute  
5   break.

6           MS. LIN:  Sure.

7                        (Whereupon, a recess was taken.)

8           JUDGE SAINSOT:  We are back on the record.

9                        Any redirect?

10          MS. LIN:  No, Judge.

11          JUDGE SAINSOT:  I have a couple questions of  
12   Ms. Hathhorn just to clarify the record in general.  
13   They may be in the record and I just missed them.

14                        So they're far from trick questions.

15                        CROSS-EXAMINATION

16                        BY

17                        JUDGE SAINSOT:

18          Q     If you know, Ms. Hathhorn, what is the  
19   at-fault hit ratio for 1,000 locates?

20          A     I really don't know a lot of detail about  
21   that.  I just know that it's the performance goal of  
22   the Incentive Comp Plan, and I got historical results

1 of what the Company has been doing to get that.

2 I believe it's a safety goal, but  
3 beyond that, I'm not sure.

4 Q Okay. I was going over your rebuttal  
5 testimony last night, and on Page 15 of your rebuttal  
6 testimony -- and I don't think you really have to  
7 look at it -- you recommend requiring Nicor to record  
8 its physical gas losses, expense in Account 823, as  
9 opposed to account -- essentially Account 352.3.

10 I just want to be clear what the  
11 difference is accounting-wise and financially between  
12 those two accounts.

13 A The difference is 823 is an operating  
14 expense account, and the other account is a rate  
15 base, so when the loss gets recorded through the  
16 expense and it's in a test year, the Company would  
17 receive that money directly in rates. Like, let's say  
18 it's \$100, the \$100 would go right into the revenue  
19 requirement.

20 But if it's the other kind of loss, we  
21 recommend it be at rate base, so \$100 be added to the  
22 total rate base and the Company gets the return and

1 appreciation expense of that.

2 JUDGE SAINSOT: Thanks very much.

3 That's all I have.

4 Anything else? Okay.

5 Thanks. You can step down.

6 (Witness excused.)

7 MS. VON QUALEN: Staff calls Sheena

8 Kight-Garlish.

9 (Witness sworn.)

10 SHEENA KIGHT-GARLISCH,

11 called as a witness herein, having been first duly

12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY

15 MS. VON QUALEN:

16 Q Good morning, Ms. Kight-Garlish.

17 A Good morning.

18 Q Please state your name and spell it for the

19 record.

20 A My name is Sheena Kight-Garlish,

21 S-h-e-e-n-a; K-i-g-h-t, hyphen, G-a-r-l-i-s-c-h.

22 Q Who is your employer and what is your

1 business address?

2 A My employer is Illinois Commerce  
3 Commission. My business address is 527 East Capitol  
4 Avenue, Springfield, Illinois 62701.

5 JUDGE SAINSOT: Ms. Garlisch, you're going to  
6 have to speak up a little bit.

7 BY MS. VON QUALEN:

8 Q Can you pull the microphone maybe a little  
9 closer. Is it on?

10 A Yes.

11 Q What is your position at the Commission?

12 A I'm a financial in the Finance Department  
13 and the Financial Analysis Division.

14 Q Did you prepare testimony for submission in  
15 this proceeding?

16 A Yes, I did.

17 Q Do you have before you a document, which  
18 has been identified as ICC Staff Exhibit 6.0C,  
19 Corrected Direct Testimony of Sheena Kight-Garlisch?

20 A Yes, I do.

21 Q Does it consist of 37 typewritten pages and  
22 Schedule 6.01 through Schedule 6.10?

1           A     Yes, it does.

2           Q     Did you prepare that testimony for  
3     submission in this proceeding?

4           A     Yes, I did.

5           Q     Do you have any additions or corrections to  
6     that testimony?

7           A     No, I don't.

8           Q     Do you also have before you a document,  
9     which has been marked as ICC Staff Exhibit 19.0C,  
10    Corrected Rebuttal Testimony of Sheena  
11    Kight-Garlisich?

12          A     Yes.

13          Q     And does that testimony consist of 19  
14    typewritten pages and Schedules 19.01 through 19.03?

15          A     19.08.

16          Q     Thank you for that correction.

17          A     Yes.

18          Q     Did you also prepare the corrected rebuttal  
19    testimony for submission in this proceeding?

20          A     Yes, I did.

21          Q     Did you have any additions or corrections  
22    to make to ICC Staff Exhibit 19.0C?



1           A     No, I do not.

2           Q     If I were to ask you the questions that are  
3     contained in ICC Staff Exhibit 6.0C and ICC Staff  
4     Exhibit 19.0C today, would your answers be the same?

5           A     Yes.

6           Q     And is the information contained in those  
7     two exhibits true and correct, to the best of your  
8     knowledge?

9           A     Yes, it is.

10          MS. VON QUALEN:  Judges, at this time, I would  
11     move for admission into evidence ICC Staff Exhibit  
12     6.0C with attached schedules, and ICC Staff Exhibit  
13     19.0C with attached schedules.

14          JUDGE SAINSOT:  Any objection?

15                                (No response.)

16                        Noting none.

17                        Your motion is granted, Counsel.

18                        And Ms. Kight-Garlich's testimony is  
19     entered into evidence, which consist of Staff 6.0C  
20     with Schedules 6.01 through 6.0 attached, and Staff  
21     Exhibit 19.0C with Schedules 19.0 through 19.01  
22     through 19.08 entered into evidence.

1 MS. VON QUALEN: Thank you.

2 (Whereupon, Staff 6.0C Schedules

3 6.01 through 6.0, Staff 19.0C,

4 Schedules 19.0 through 19.01

5 through 19.08 were admitted

6 into evidence.)

7 MS. VON QUALEN: Ms. Kight-Garlich is

8 available for cross-examination.

9 MS. SODERNA: I can start.

10 CROSS-EXAMINATION

11 BY

12 MS. SODERNA:

13 Q Good morning, Ms. Kight-Garlich.

14 My name is Julie Soderna. I'm with

15 the Citizens Utility Board.

16 I'm going to ask you some questions

17 regarding -- just a couple -- regarding the beta

18 adjustment that you used in your capital asset

19 pricing model or capM.

20 In your rebuttal testimony at Page 17,

21 Lines 312 through 314, you testified that an academic

22 paper, referred to generally as the Nagle Paper, does

1 not apply to staff capM analysis because the Nagle  
2 Paper did not explicitly considered adjusted betas;  
3 is that right?

4 A Correct.

5 Q You would agree with me, wouldn't you, that  
6 the Nagle Paper found that an oversimplified version  
7 of the capM where all betas equal 1 was or accurate  
8 than a model using unadjusted raw betas; is that  
9 correct?

10 A Correct.

11 Q Am I correct that your capM analysis  
12 purports to correct the errors inherent in unadjusted  
13 betas by applying a mean reversion adjustment that  
14 adjusts raw betas closer to the market mean?

15 JUDGE SAINSOT: Ms. Soderna, you're going to  
16 have to break that one up.

17 Take your time.

18 MS. SODERNA: Okay.

19

20 (CHANRGE OF REPORTER)

21

22

1 BY MS. SODERNA:

2 Q Okay. Let's start with -- you believe  
3 that -- you believe there are errors inherent in  
4 unadjusted betas; is that right?

5 A Yeah. Are you referring to my direct or  
6 my rebuttal? My analysis changed in my rebuttal.

7 Q I'm referring to your rebuttal testimony.

8 A Because I didn't rely on my reversion beta  
9 in rebuttal. I relied on a value line beta and  
10 published betas from Zacks, Yahoo.

11 Q Okay. And those --

12 A And those use --

13 Q The value line analysis, that --

14 A Value line adjusts for beta. The published  
15 beta from the other sources is not adjusted.

16 Q Okay. And the value line adjustment is  
17 also called a mean reversion adjustment; is that  
18 right?

19 A Yes.

20 Q Okay. So we're on the same page. That's  
21 what I'm referring to. And you apply -- or your  
22 analysis applies that mean reversion adjustment --

1 the value line adjustment applies the mean reversion  
2 adjustment to adjust raw betas closer to the market  
3 mean; is that right?

4 A Yes.

5 Q And the value line -- the value line beta  
6 is adjusted to the market mean rather than a utility  
7 specific average beta; is that right?

8 A Yes.

9 Q And you believe that adjustment is  
10 appropriate at least in part because you believe the  
11 derivation of the true industry mean beta is  
12 problematic; isn't that right?

13 A Yes.

14 Q And that is because of your reliance on  
15 other academic findings showing that adjusted betas  
16 perform better than unadjusted betas; is that right?

17 A Correct.

18 Q And the Commission has historically relied  
19 on this evidence in approving the use of adjusted  
20 betas; is that right?

21 A Yes.

22 Q You haven't performed, have you, any study

1 or analysis of the particular sample of comparable  
2 utilities in this proceeding to examine the  
3 performance of the mean reversion adjustment in terms  
4 of the effect on the accuracy of the beta estimate,  
5 have you?

6 A No.

7 MS. SODERNA: That's all I have.

8 MR. ANDREOLI: We have an exhibit that we were  
9 hoping to use as part of our examination. To save  
10 time, would it be all right if we set it up now?

11 JUDGE SAINSOT: Right. Your examination of  
12 this witness or another witness?

13 MR. ANDREOLI: Of Ms. Kight-Garlisch. I may  
14 not get to it for a minute or two.

15 JUDGE SAINSOT: Right. Sure. Go ahead. You  
16 can set it up now.

17 (Discussion off the record.)

18 MR. ANDREOLI: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY

21 MR. ANDREOLI:

22 Q Ms. Kight-Garlisch, my name is Tom

1 Andreoli. I represent Nicor Gas. We met earlier out  
2 in the hall. I'm going to try to conduct this  
3 examination without Dr. Makholm at my side. So I  
4 hope you bear with me.

5 I think -- can we agree on the  
6 statement that for a utility to attract common equity  
7 capital, it must provide a rate of return on common  
8 equity sufficient to meet investor requirements?

9 A Yes.

10 Q Now, Ms. Soderna spoke with you about your  
11 CAPM analysis. You also conducted a discounted cash  
12 flow analysis for purposes of arriving at your return  
13 on equity recommendation in this case; that's right,  
14 isn't it?

15 A Yes.

16 Q And Dr. Makholm described the DCF method as  
17 one that makes use of the relationship between the  
18 current stock price and the expected future stream of  
19 dividends in order to calculate investors' estimated  
20 discount rate or cost of equity. Would you agree  
21 with that definition?

22 A For the investor-required return, yes.

1           Q     Thank you.

2                     Now, you, for purposes of your

3     analysis, conducted what you described as a

4     nonconstant discounted cash flow analysis; yes?

5           A     Yes.

6           Q     And, in particular, you conducted what you

7     described as a multistage nonconstant growth DCF

8     model?

9           A     Yes.

10          Q     And that would contrast with Dr. Makholm's

11     approach which can fairly be described as a

12     single-stage approach?

13          A     Correct.

14          Q     And for purposes of his single-stage

15     approach, Dr. Makholm used three inputs to arrive at

16     his DCF recommendation; is that correct?

17                     Let me rephrase that. I apologize.

18                     To arrive at his single-stage growth

19     rate?

20          A     By three inputs, you mean the dividends,

21     the stock price, and the growth rate?

22          Q     Yes.



1           A     Even though he has multiple methods to  
2     determine the growth rate.

3           Q     I actually meant the multiple methods to  
4     determine growth rate; is that correct?

5           A     Yes.

6           Q     Okay. Now, the approach that you took  
7     involved three stages. There was a near-term growth  
8     stage, which you assume to last five years. That's  
9     correct, right?

10          A     Yes.

11          Q     There was -- I'm going to jump ahead.  
12     There was a steady stage -- what you described as a  
13     steady-stage growth rate, which lasted effectively  
14     into perpetuity?

15          A     Yes.

16          Q     And in between the two, you had a  
17     transitional growth period and that was for years 6  
18     through 10?

19          A     Correct.

20          Q     So. Or if I've got your growth -- the way  
21     you approached your growth rate correctly, you had  
22     years 1 through 5, years 6 through 10, and then year

1     11 on into infinity?

2             A     Correct.

3             Q     And if I understood your testimony

4     correctly, you used that approach because, from your

5     perspective, the growth rate that you arrived at

6     using empirical data for the first stage could not be

7     sustained over the long-term?

8             A     Correct.

9             Q     Okay. And in order to arrive at your first

10    stage growth rate, you used empirical data from Zacks

11    investment research?

12            A     I used the Zacks investment -- analyst

13    invested forecasts, correct, which are 3- to 5-year

14    forecasts.

15            Q     Just so I understand that particular input

16    correctly, those are dividend growth rate estimates

17    from Zacks?

18            A     Earnings growth rate.

19            Q     Okay. The stock price date you used was

20    July 22nd, 2008?

21            A     Yes.

22            Q     That's the same date that Dr. Makholm used

1       for his calculation; is that correct?

2           A       In his rebuttal, I believe he updated it.

3           Q       Thank you.

4           A       The same date.

5           Q       And he did that or at least he testified he

6       did that for the purpose of trying to arrive at some

7       kind of a comparability, to the extent possible,

8       between his calculations and yours?

9           A       I think so.

10          Q       Does that sound fair?

11          A       I believe that's what he says.

12          Q       Okay. Now, could I ask you to take a look

13       at Schedule 6.03 to your direct testimony.

14          A       Yes.

15          Q       You're ahead of me. Hang on.

16                    If one were to look at the column that

17       you've labeled Stage 1 with the footnote, those are

18       the Zacks 3- to 5-year earnings per share growth rate

19       estimates that you used for your calculation?

20          A       Yes.

21          Q       And there are seven of them; correct?

22          A       Correct.

1           Q     And that's seven members of -- that's the  
2     seven-member peer group that you used for your  
3     analysis?

4           A     Yes.

5           Q     And if I recall correctly, Dr. Makholm had  
6     eight companies in his peer group?

7           A     Correct.

8           Q     And you --

9           A     He had MGE, which does not have a Zacks  
10    growth rate that is published. So I excluded it.

11          Q     Fair enough. Thank you. I was going to  
12    ask you that.

13                     You did agree that MGE was a  
14    reasonable estimator of Nicor Gas' operating risk;  
15    correct?

16          A     Correct. Yes.

17          Q     But based on the lack of the Zacks  
18    growth rate -- based on the lack of the Zacks growth  
19    rate, you excluded it from your peer group?

20          A     Correct.

21          Q     Okay. Now, you testified on rebuttal that  
22    if the Commission were to accept Dr. Makholm's

1 methodology for determining the proper growth rate  
2 for the companies in the sample, then staff would  
3 have no objection to inclusion of MGE Energy in the  
4 utility sample?

5 A Correct.

6 Q Okay. I'd like to show you -- did you  
7 review Dr. Makholm's work papers as you were  
8 preparing your testimony in this case?

9 A I went through, I believe, the majority of  
10 his.

11 MR. ANDREOLI: Okay.

12 Your Honor, may I approach the  
13 witness?

14 JUDGE SAINSOT: Yes, you may.

15 MR. ANDREOLI: I think I'm going to mark this  
16 first. Your Honor, are we on Cross Exhibit 1?

17 JUDGE BENN: Yes.

18 MR. ANDREOLI: Thank you.

19 JUDGE SAINSOT: Judge Benn has it all under  
20 control there.

21

22

1 (Whereupon, Nicor Cross  
2 Exhibit No. 1 was  
3 marked for identification  
4 as of this date.)  
5 THE WITNESS: When was this corrected?  
6 BY MR. ANDREOLI:  
7 Q You know, it was corrected yesterday. I  
8 have the earlier copy. I'm more than happy to show  
9 it to you.  
10 A What was corrected on it?  
11 Q The footnote. I'll tell you, to make it --  
12 I think it is probably better to do it where I show  
13 you the earlier version as well.  
14 A But this is based on his direct and not his  
15 rebuttal, which he updated in rebuttal this  
16 information.  
17 Q I'd have to ask you that.  
18 A Well, I believe I have the updated exhibit.  
19 JUDGE BENN: Are you going to make this all one  
20 exhibit?  
21 MR. ANDREOLI: I marked it as 2.  
22

1 (Whereupon, Nicor Cross  
2 Exhibit No. 2 was  
3 marked for identification  
4 as of this date.)  
5 BY MR. ANDREOLI:  
6 Q Ms. Kight-Garlis, maybe the best way to  
7 do this is I've marked for purposes of identification  
8 the corrected work paper as Nicor Cross Exhibit 1 and  
9 I've marked the original work paper as Nicor Gas  
10 Cross Exhibit 2.  
11 If you look at the two -- and please  
12 take your time to do so -- I want to make sure we can  
13 agree that the only differences in the two documents  
14 are that the corrected work paper, Nicor Gas Cross  
15 Exhibit 1, in the header is labeled as Corrected Work  
16 Paper and the text of Footnote 2 is different?  
17 A Actually, there's two columns added into  
18 the corrected work paper.  
19 Q I apologize. I agree with you.  
20 A Do you know what those two columns are  
21 supposed to represent?  
22 Q I don't anticipate I'm going to ask you

1       questions about those two columns.

2               A       I --

3               Q       I'm not asking you to do anything now, but

4       to the extent you reviewed his work papers, you may

5       not remember this particular work paper which was --

6               A       I have it right here.

7               Q       Terrific.  Okay.  So you did look at it?

8               A       Yes.

9               Q       All right.  Would you agree with me that

10      this particular work paper was served with his

11      rebuttal testimony?

12              A       Yes.

13              Q       Okay.

14              A       The 10.08 that does not say Corrected Work

15      Paper was served with the rebuttal testimony.

16              Q       Fair enough.  And, subject to check, would

17      you agree with me that the corrected work paper was

18      served yesterday?

19              A       Subject to check.  I have not received it,

20      though.

21              Q       Okay.

22              A       I have not seen it before.



1           Q     Okay.  And what I would like to ask you to  
2     do is to take a look at the column which is labeled  
3     Stage 1 Growth Rate and the little letter g.  Do you  
4     see that column?

5           A     Yes.

6           Q     And why don't we work off the corrected  
7     work paper, which is Nicor Gas Cross Exhibit 1.

8                     Excluding the second line item of the  
9     cross exhibit for MGE Energy, are the growth rates  
10    indicated on the spreadsheet the same as the growth  
11    rates indicated on your Schedule 6.03?

12          A     Yes.

13          Q     Okay.

14          A     Stage 1.

15          Q     Stage 1.  Okay.

16                    Do you see the growth rate indicated  
17    for MGE Energy?

18          A     Yes.

19          Q     And I think we agree that Zacks did not  
20    have an estimate for MGE Energy, which is why you  
21    excluded MGE from your peer group; correct?

22          A     Correct.

1 MR. ANDREOLI: Okay.

2 Your Honor, may I approach the  
3 witness? Thank you. Your Honor, we're marking this  
4 as Exhibit 3.

5 JUDGE SAINSOT: Okay.

6 (Whereupon, Nicor Cross  
7 Exhibit No. 3 was  
8 marked for identification  
9 as of this date.)

10 (Discussion off the record.)

11 BY MR. ANDREOLI:

12 Q Ms. Kight-Garlis, if you take a look at  
13 Nicor Gas Cross Exhibit 3, this is actually  
14 Exhibit 25.6 to Dr. Makholm's testimony which already  
15 has been admitted in this proceeding.

16 I'd like you to look at the line item  
17 labeled for MGE Energy and, in particular, the  
18 Average Growth Rate presented in the last column  
19 which indicates 5.65. Do you see that?

20 A Yes.

21 Q And that's the same number that's presented  
22 in the Stage 1 growth rate on Nicor Gas Cross

1 Exhibit 1 for MGE Energy. Do you see that?

2 A Yes, but the footnote to your Nicor Cross  
3 Exhibit 1 says that he substituted Zacks growth rates  
4 from my testimony. And that is not a Zacks growth  
5 rate.

6 Q Fair enough. In fact, I was going to ask  
7 you, do you understand that it is not a Zacks growth  
8 rate, it is an average of two of the three inputs  
9 that Dr. Makholm used to create a growth rate for MGE  
10 Energy?

11 In particular, I'd ask you to look at  
12 the estimated VL growth column and the B times R plus  
13 S times V column and average those two.

14 A Yes.

15 Q Do you see that?

16 A Yep.

17 Q And would you agree that 5.65 is just a  
18 simple average of the two?

19 A Yes.

20 Q Okay. Now, if you look at the calculation  
21 that's performed in corrected work paper -- Nicor Gas  
22 Cross Exhibit 1, the corrected work paper,

1 effectively, if I understand this calculation  
2 correctly, we're looking at a single-stage growth  
3 rate methodology which has substituted Zacks  
4 estimates for the Stage 1 growth and also includes an  
5 average which does not pertain to Zacks for MGE  
6 Energy; would you agree with that?

7 A Yes.

8 Q Okay. And if you were to play out this  
9 spreadsheet, the calculation presented here, which is  
10 Dr. Makholm's methodology modified to use Zacks  
11 growth rates, it produces an unadjusted ROE in the  
12 fifth column of 10.51. Do you see that?

13 A Yes.

14 Q Okay. Subject to check, would you agree  
15 with me that that is arithmetically the correct  
16 result?

17 A I really don't have to time to check that  
18 and I can't verify that that is correct. I would  
19 have to run the numbers myself.

20 Q Okay. But subject to check --

21 A That is Dr. Makholm's calculation of DCF.

22 Q I agree with that.

1                   What I'm asking you is, subject to  
2   check, plugging in your growth rates with the  
3   exception of the MGE, which is an average, and  
4   running it through Dr. Makholm's DCF calculation, one  
5   arrives at an unadjusted return on equity of 10.51  
6   percent; correct?

7           A     That is what Dr. Makholm arrived at. I  
8   would have to run the analysis to verify that that's  
9   correct.

10          Q     Okay. Do you have any reason --

11          A     I don't have time. I guess --

12          Q     I'm not asking you to do that. I'm  
13   suggesting that, assuming this spreadsheet is  
14   arithmetically correct, the number is most likely  
15   correct as well; yes?

16          A     Assuming that this is arithmetically  
17   correct, then I would say that Dr. Makholm's  
18   calculation of 10.51 is correct as he presents it in  
19   this paper.

20          Q     Thank you.

21                   In addition to your DCF analysis, you  
22   also prepared a CAPM analysis which Ms. Soderna spoke

1 with you about earlier; yes?

2 A Yes.

3 Q You referred to it in your testimony in two  
4 ways. You referred to it as a CAPM and you referred  
5 to it as a risk premium analysis. It's the same  
6 thing, isn't it?

7 A Yes.

8 Q Okay. And I think, as you indicated while  
9 you were talking with Ms. Soderna on direct, you used  
10 value lines betas in a regression analysis to  
11 estimate the beta of your utility sample; that's  
12 right, isn't it?

13 A In my direct testimony, yes, that's  
14 correct.

15 Q In your direct.  
16 Now, on rebuttal, you took a different  
17 approach; yes?

18 A Yes.

19 Q Now, if I understood what happened in your  
20 rebuttal testimony, you determined to use only  
21 published betas as a way to reduce the contested  
22 issues in the case?

1           A     Correct.

2           Q     Okay. And the rebuttal testimony, as I  
3 understand it, uses four published raw betas from  
4 Reuters, Scott Trade, Yahoo with an exclamation  
5 point, and Zacks; is that right?

6           A     Yes.

7           Q     Okay. And one published adjusted beta  
8 estimate, which is value line?

9           A     Correct.

10          Q     Is that the same beta that Dr. Makholm  
11 uses?

12          A     Value line beta, yes.

13          Q     Okay. And when you ran through your  
14 calculation using the four raw betas and one adjusted  
15 beta, you reached a CAPM return on equity of  
16 10.6 percent; is that correct?

17          A     Yes.

18          Q     And we didn't get to this earlier, but your  
19 DCF result stayed the same, it's been 9.25 on direct  
20 and rebuttal?

21          A     Yes.

22          Q     Okay. And for purposes of making a

1 recommendation as to ROE in this case, you then  
2 averaged your CAPM, the 10.6 and the 9.25, which  
3 produced a 9.93 ROE result; does that sound right?

4 A Yes.

5 Q And then Ms. Von Qualen talked with  
6 Dr. Makholm a little bit about, I believe, the risk  
7 adjustment question, I think.

8 But, in any event, you further  
9 adjusted your result by 25 basis points for what you  
10 perceived to be Nicor Gas' lower risk relative to the  
11 peer group; correct?

12 A Yes.

13 Q And that produces the 9.68 return on equity  
14 which is reflected on the big chart?

15 A Yes.

16 MR. ANDREOLI: Your Honor, for purposes of  
17 discussing the chart, I'll go ahead and mark it as  
18 Nicor Gas Cross Exhibit 4. And I have some small  
19 copies. I'll go ahead and hand one of those up.

20

21

22



1 (Whereupon, Nicor Cross  
2 Exhibit No. 4 was  
3 marked for identification  
4 as of this date.)

5 JUDGE SAINSOT: I'm sure the Clerk's Office  
6 would prefer the small copies.

7 BY MR. ANDREOLI:

8 Q In your rebuttal testimony, you also stated  
9 that the Commission has traditionally relied upon  
10 adjusted beta estimates; that's correct, isn't it?

11 A Yes.

12 Q And along those lines, you adjusted the  
13 four raw betas that you used in the calculation we  
14 just reviewed; correct?

15 A Correct.

16 Q And when you took those four adjusted  
17 betas, plus the value line beta, you calculated a  
18 CAPM return on equity of 11.39 percent; correct?

19 A Correct.

20 Q And when you averaged that with the  
21 9.25 percent DCF result, you reached an unadjusted  
22 return on equity of 10.32 percent; yes?

1           A     Correct.

2           Q     And then when you applied your 25 basis  
3 point reduction, you reached a return on equity of  
4 10.07 percent; right?

5           A     Yes.

6           Q     But the 10.07 percent is not Staff's  
7 recommendation for return on equity in this case, is  
8 it?

9           A     No.

10          Q     The recommendation is 9.68; is that right?

11          A     Correct.

12          Q     Can you identify for me another Commission  
13 decision that based the CAPM result on a mixture of  
14 raw and unadjusted betas?

15          A     No.

16          Q     I'm going to say that again because what I  
17 just said made no sense.

18                    Would you identify another Commission  
19 decision that based the CAPM result on raw and  
20 adjusted betas?

21          A     I don't know any other Commission -- or I  
22 don't know of any Commission decisions that based

1       their decision on raw and adjusted betas.

2               Q     Not one?

3               A     No.

4               Q     Okay.  Now, when we started talking, you  
5       agreed with me that for a utility to attract common  
6       equity capital, it must provide a rate of return on  
7       common equity sufficient to meet investor  
8       requirements.  Do you remember that?

9               A     Yes.

10              Q     Okay.  And that's because utilities have to  
11      compete for capital; right?

12              A     Yes.

13              Q     All right.  Now, I'm going to ask you --  
14      excuse me.

15                               I'm going to ask you to look at the  
16      columns that are indicated on Cross Exhibit 4 and  
17      they're footnoted.  And I'd like you to look at the  
18      column labeled People's which is from Docket Nos.  
19      07-0241 and 0242 consolidated.  You participated in  
20      that proceeding, didn't you?

21              A     Yes.

22              Q     Subject to check, do those -- subject to

1 check, would you agree with me that those are, in  
2 fact, the return on equity figures adopted by the  
3 Commission in that proceeding?

4 A Subject to check, yes.

5 Q Fair enough.

6 And with respect to the second column,  
7 ComEd Docket No. 07-0566, subject to check, would you  
8 agree with me that 10.3 was the return on equity  
9 adopted by the Commission in that proceeding?

10 A Subject to check.

11 Q And the same thing with respect to column  
12 three, the Ameren Utilities, September 24th order in  
13 Dockets 07-0585 through 590, subject to check, those  
14 are the numbers?

15 A Yes.

16 Q The ROE recommendations the Commission  
17 adopted?

18 A Subject to check, yes.

19 Q Okay. Those are all decisions handed down  
20 in 2007; right? '8. I apologize. They're all 2007  
21 dockets, but it's, in fact, this year?

22 A Yes.

1           Q     Thanks.

2                     Is it fair to say, when you look at  
3     those first three columns, that at least in theory,  
4     the return on equity the Commission arrived at for  
5     each of those utilities should put the utility on an  
6     equal footing with the others in terms of attracting  
7     equity capital?

8           A     What do you mean by equal footing?

9           Q     The utility -- the Commission set a return  
10    on equity, which should allow those utilities to  
11    compete for investment capital?

12          A     The return on equity set by the Commission  
13    should allow the utilities to -- the ability to or  
14    the chance to earn the investor's required rate of  
15    return on capital; but that investor required rate of  
16    return, as you can see, is different for each  
17    company.

18          Q     Understood. But the fact that it's  
19    different shouldn't necessarily mean that an investor  
20    is going to run out and go to Ameren because of the  
21    higher number?

22          A     Correct, because there's different risk

1 with the companies.

2 Q Fair enough.

3 My question is, what is it about Nicor  
4 Gas that makes it such a great company that an  
5 investor is going to devote its capital to Nicor Gas  
6 at a 9.68 return on equity?

7 A Well, first, they're all determined at  
8 different dates. So if you ran a cost of equity or  
9 investor required return, currently you would  
10 probably get a different number than what you do in  
11 those cases.

12 And Nicor has a stronger credit rating  
13 from S&P, I'm sure, than Ameren and ComEd, which are  
14 triple B credit ratings, I believe. And People's, I  
15 believe, is an A-rated company, but -- subject to  
16 check. And from S&P, Nicor Gas is double A.

17 Q Would you agree with me that the orders in  
18 each of the People's, ComEd, and Ameren cases were  
19 entered before or at the beginning of what I think  
20 can fairly be described as a very difficult time in  
21 the financial markets?

22 A No, not entirely. Order -- the last two

1 orders were in September and the -- although the  
2 market has continued to decline, that would have  
3 still been with the -- difficulty in the financial  
4 sector was already occurring at that time.

5 Q Would you agree with me that October was a  
6 heck of a month in the financial markets?

7 A Yeah.

8 Q Okay. A heck of a bad month; right?

9 A For some companies, but not for every  
10 company.

11 Q How about for the market as a whole?

12 A For the market as a whole, it declined  
13 substantially.

14 Q Okay. When the Commission -- I think it's  
15 probably fair to say when the Commission reaches an  
16 approved return on equity, it's not going to make all  
17 utilities equal just because they have to compete for  
18 investment capital; would you agree with that?

19 A What do you mean it won't make all  
20 companies equal?

21 Q The Commission is not going to set every  
22 utility's return on equity at the same rate --

1           A     No.

2           Q     -- simply because they have to compete for  
3 capital; correct?

4           A     Correct.

5           Q     But the relative ability to compete for  
6 capital is a consideration; that's fair, isn't it?

7           A     Yes.

8           Q     Okay. Just briefly with respect to the  
9 riders that are proposed in this case, you testified  
10 that Moody's states that rate designs that compensate  
11 the utility for margin losses caused by conservation  
12 and weather-related variations and gas consumption  
13 stabilized the utilities' credit metrics and credit  
14 ratings?

15                     You know, I'll -- rather than do that,  
16 would you mind taking a look at your direct,  
17 Exhibit 6.0. I believe it's on Page 25.

18           A     Yes.

19           Q     Is that a correct --

20           A     I'm sorry. I couldn't hear what you were  
21 reading. There was something going by at the time.  
22 But, yeah, I might -- discussion of the riders begins



1 on Page 25 of my direct testimony.

2 Q And, in fact, I had it marked as 25 and 26  
3 because it jumps the page.

4 If you take a look at the bottom of  
5 Page 25 and the top of Page 26, there's -- as part of  
6 your discussion of the riders, you indicate that  
7 Moody's states that rate designs that compensate the  
8 utility for margin losses caused by conservation and  
9 weather-related variations and gas compensation  
10 stabilize the utilities' credit metrics and credit  
11 ratings?

12 A Consumption.

13 Q Consumption. Okay.

14 That part of your testimony, that is  
15 support for Staff's position in this case that were  
16 certain of these -- or all, excuse me, were all of  
17 these riders adopted, that it may be the case that an  
18 adjustment -- an additional adjustment in the return  
19 on equity is warranted, that's Staff's position;  
20 correct?

21 A Yes.

22 Q Okay. I didn't see it. There's nothing in

1     your testimony -- there's not an example in your  
2     testimony of Moody's ever moving a credit rating up  
3     or down because of decoupling or a weather clause?

4             A     I didn't have anything in my testimony.

5             Q     There's no examples in there?

6             A     No, there's no examples in my testimony.

7             Q     Okay.  Would you please take a look at your  
8     rebuttal testimony, Exhibit 19.0, on Page 16.

9             A     Yes.

10            Q     And in particular, I'm looking at Lines 277  
11     to 278.  In your testimony with respect to the  
12     bulletin from S&P on NSTAR and Dr. Makholm's use of  
13     that, you suggest that his quote is deceptive and  
14     that he falsely implies that the bulletin is based on  
15     the results of an NSTAR rate case.

16                         Having reviewed Dr. Makholm's  
17     surrebuttal testimony, would you agree with me that  
18     there's no indication that Dr. Makholm did anything  
19     to mislead anybody in this case?

20            A     No.  I believe in his rebuttal that he was  
21     misleading -- in his rebuttal testimony of this  
22     bulletin from S&P.

1           Q     When you look at Dr. Makholm's surrebuttal  
2     testimony, he quoted the statement from the bulletin  
3     in its entirety; is that correct?

4           MS. VON QUALEN:   Mr. Andreoli, do you have a  
5     citation to his testimony?

6           MR. ANDREOLI:    Sure.   Just a minute.

7           THE WITNESS:    I have it.   It's Page 13 and 14.

8           MR. ANDREOLI:    Just for purposes of the record,  
9     your Honor, it's Dr. Makholm's surrebuttal testimony,  
10    Nicor Gas Exhibit 44.   The question begins on Page 13  
11    and the answer runs through Pages 14 and -- 14 and  
12    15.

13    BY MR. ANDREOLI:

14           Q     Do you see the full quote there,  
15     Ms. Garlisch, at the top of Page 14?

16                         Right-Garlisch, I apologize.

17           A     Yes.   He includes the entire quote in his  
18     surrebuttal.

19           Q     It looks to be accurate?

20           A     Yes.   Well, except for that he abbreviated  
21     Department of Public of Utilities as DPU.

22           Q     But beyond that --

1           A     Beyond that, it's --

2           Q     -- it looks to be correct?

3           A     Yeah.

4           Q     Putting aside a possible miscommunication

5     between yourself and Dr. Makholm on this particular

6     bulletin, would you agree with me that we're on all

7     fours now with respect to what's in the evidentiary

8     record?

9           A     Yes, as far as what the report says.

10          MR. ANDREOLI:   Thank you, your Honor.  I have

11     nothing further.  Thank you Ms. Kight-Garlich.

12                    Could I move the cross exhibits into

13     the record now?

14          JUDGE SAINSOT:   Well, I would if I were you.

15          MR. ANDREOLI:   Okay.  I'll change that from a

16     question to a request.

17                    May I move the cross exhibits into the

18     record now, your Honor?

19          JUDGE SAINSOT:   Okay.  You have four exhibits?

20          MR. ANDREOLI:   It's Nicor Gas Cross 1, 2, 3 and

21     4.

22          JUDGE SAINSOT:   Okay.  Any objection to the

1 admission into the record of Nicor Gas 1, 2, 3 and 4?

2 MS. VON QUALEN: Judge, if I could have just a  
3 minute to consult?

4 JUDGE SAINSOT: Sure.

5 (Discussion off the record.)

6 MS. VON QUALEN: Judge, I do have an objection  
7 to Nicor Cross Exhibit 1. And that is based upon  
8 what Ms. Kight-Garlich pointed out, that there are  
9 those two columns in Nicor Cross Exhibit 1, which is  
10 the corrected work paper, which do not appear on the  
11 original work paper, which is Nicor Cross Exhibit 2.

12 I don't know what those numbers are.  
13 The record doesn't show what those numbers are. I  
14 understand, I think, that Mr. Andreoli wants Nicor  
15 Cross Exhibit 1 in for the purposes of the change in  
16 the Footnote 2.

17 So I don't know if we could just, you  
18 know, take judicial notice of the fact that No. 2 on  
19 Cross Exhibit -- Nicor Cross Exhibit 2 should  
20 actually read Substituted Zacks Growth Rates from  
21 Ms. Kight-Garlich's Testimony.

22 JUDGE SAINSOT: I have a simpler solution.

1     Black Magic marker.

2             MR. ANDREOLI:   Your Honor, I have reached the  
3     end of my technical expertise.  If I could have just  
4     a moment to consult with Dr. Makholm, I should be  
5     able to answer Counsel's question and resolve this.

6             JUDGE SAINSOT:   Yeah, but you can't testify as  
7     to those what columns are.

8             MR. ANDREOLI:   I'm not intending myself to put  
9     myself in the position of a testifying witness.

10            JUDGE SAINSOT:   Okay.  Good.  But it may just  
11    be that -- for purposes of the record, the easiest  
12    way is to get -- after you have talked with  
13    Dr. Makholm --

14            MR. ANDREOLI:   You know what, having consulted  
15    with Counsel, Mr. Rooney, it appears to be the case  
16    that marking out those two columns will be just fine.

17            JUDGE SAINSOT:   Okay.  When we're on break,  
18    Judge Benn, I'll go get a black Magic marker and  
19    we'll take care of it.  I think that's the easiest  
20    way because you're not talking about those columns  
21    and black Magic marker works so well and is so easy.

22            MR. ANDREOLI:   Thank you, your Honor.

1 JUDGE SAINSOT: Okay.

2 Any further objections?

3 MS. VON QUALEN: No, your Honor.

4 JUDGE SAINSOT: Okay. That being the case,

5 Nicor's Cross Exhibit 1 through 4 are admitted into

6 evidence, with the stipulation that these two

7 extraneous columns between the unadjusted ROE and the

8 percentage change on Nicor Exhibit 1 will soon be

9 subject to the black Magic marker at the next break.

10 (Whereupon, Cross Nicor

11 Exhibit Nos. 1 through 4 were

12 admitted into evidence

13 as of this date.)

14 MS. VON QUALEN: Judge, I don't know, does

15 anyone else have cross for Ms. Kight-Garlisich?

16 Then I would ask for a brief break so

17 that I may consult with her.

18 JUDGE SAINSOT: Sure. What time is it, 11:00?

19 Want to say 11:15.

20 (Recess taken.)

21 JUDGE SAINSOT: Just for the record, could

22 Counsel take a look at Exhibit 1 with my high-tech

1 alterations.

2 MR. ANDREOLI: Fine by me.

3 MS. VON QUALEN: Okay.

4 JUDGE SAINSOT: Okay. Thanks. I just wanted  
5 to make sure. Thank you.

6 MS. VON QUALEN: We have no further questions.

7 JUDGE SAINSOT: Okay. Ms. Kight-Garlich,  
8 you're excused. Thanks.

9 MS. SODERNA: CUB filed the direct testimony of  
10 Christopher C. Thomas, which was marked as CUB  
11 Exhibit 1.0 and attachment 1.1, as well as the  
12 rebuttal testimony of Christopher C. Thomas, which  
13 was designated as CUB Exhibit 2.0 with no  
14 attachments.

15 I have three copies of each of the  
16 testimonies, but I just realized that I do not have  
17 three copies of CUB Exhibit 1.1. I could get those  
18 to you.

19 JUDGE SAINSOT: At lunchtime?

20 MS. SODERNA: At lunchtime.

21 JUDGE SAINSOT: Okay. Fine.

22 MS. SODERNA: So with that, CUB moves for the



1 admission of CUB Exhibit 1.0, 1.1, and 2.0.

2 JUDGE SAINSOT: Any objection?

3 MR. ROONEY: None.

4 JUDGE SAINSOT: Okay. That being the case,

5 Ms. Soderna, your motion is granted. And CUB

6 Exhibit 1.0, 1.01, and 2.0 are entered into evidence

7 with the understanding that 1.01 will be tendered

8 after lunch.

9 MS. SODERNA: Thank you very much.

10 (Whereupon, CUB

11 Exhibit No. 1.0, 1.01, and 2.0 were

12 admitted into evidence

13 as of this date.)

14 JUDGE SAINSOT: So we have Mr. Lazare now.

15 Okay. (Witness sworn.)

16 PETER LAZARE,

17 called as a witness herein, having been first duly

18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY

21 MS. VON QUALEN:

22 Q Good morning, Mr. Lazare.

1           A     Good morning.

2           Q     Please state your name and spell your last  
3     name for the court reporter.

4           A     Peter Lazare, L-a-z-a-r-e.

5           Q     Who is your employer and what is your  
6     business address?

7           A     Illinois Commerce Commission. And my  
8     business address is 527 East Capitol Avenue,  
9     Springfield, Illinois, 62701.

10          Q     What is your position at the Commission?

11          A     I'm a senior rates analyst.

12          Q     Did you prepare testimony for submission in  
13     this proceeding?

14          A     Yes.

15          Q     Do you have before you a document which has  
16     been identified as ICC Staff Exhibit 7.0, Direct  
17     Testimony of Peter Lazare?

18          A     Yes.

19          Q     That document consists of 43 typewritten  
20     pages and Schedule 7.01 through 7.07?

21          A     Yes.

22          Q     Do you have any additions or corrections to

1       make to ICC Staff Exhibit 7.0 and schedules?

2               A       No.

3               Q       Did you prepare that document for

4       submission in this proceeding?

5               A       Yes.

6               Q       Do you also have before you a document

7       which has been identified as ICC Staff Exhibit 20.0,

8       Rebuttal Testimony of Peter Lazare?

9               A       Yes.

10              Q       Did you prepare that document for

11       submission in this proceeding?

12              A       Yes.

13              Q       Does that document consist of 27

14       typewritten pages?

15              A       Yes.

16              Q       Do you have any additions or corrections to

17       ICC Staff Exhibit 20.0?

18              A       No.

19              Q       If I were to ask you the same questions

20       today as are contained in ICC Staff Exhibits 7.0 and

21       20.0, would your answers be the same?

22              A       Yes.

1           Q     And are the answers therein true and  
2     correct, to the best of your knowledge?

3           A     Yes.

4           MS. VON QUALEN:  Judges, at this time, I move  
5     for admission into evidence of ICC Staff Exhibits  
6     7.0, the direct testimony of Peter Lazare, with  
7     attached schedules, and ICC Staff Exhibit 20.0, the  
8     rebuttal testimony of Peter Lazare.

9           JUDGE SAINSOT:  Any objection?

10                   Hearing none, your motion is granted,  
11     Counsel.  Staff Exhibit 7.0 with attachments 7.01  
12     through 7.07, as well as Staff Exhibit 20.0 are  
13     entered into evidence.

14                           (Whereupon, Staff  
15                           Exhibit Nos. 7.0 and 20.0 were  
16                           marked for identification  
17                           as of this date.)

18           MR. ROBERTSON:  I think I am the only one that  
19     has cross for this witness, your Honor.

20           JUDGE SAINSOT:  Okay.

21

22

1 CROSS EXAMINATION

2 BY

3 MR. ROBERTSON:

4 Q Good morning, Mr. Lazare.

5 A Good morning.

6 Q My name is Eric Robertson. I represent the  
7 Illinois Industrial Energy Consumers.

8 I'd like to direct you to Page 24 of  
9 your direct testimony, Staff Exhibit 7.0. Now, there  
10 you state that the company has historically  
11 recommended use of the coincident peak method for  
12 allocating distribution mains, but has proposed the  
13 A&P method in this case in order to limit the scope  
14 of the issues in this proceeding; is that correct?

15 A Yes.

16 Q Would you agree the company has not stated  
17 that it believes that the average and peak method, or  
18 the A&P method, better reflects cost causation?

19 A Yes.

20 Q Would you agree that Mr. Mudra, the Nicor  
21 witness in this area, still maintains that the cost  
22 of mains are fixed and, thus, not a function of

1 annual throughput?

2 A Yes.

3 Q And are you aware or, to your knowledge,  
4 has Nicor ever taken the position that a portion of  
5 distribution mains are the result of just adding  
6 customers to the system without regard to the level  
7 of demand on the system?

8 A I'm not aware of that specific position.

9 (Discussion off the record.)

10 BY MR. ROBERTSON:

11 Q All right. Turn to Page 26 in your direct  
12 testimony. And I'm looking at Line 560. There you  
13 note that the A&P method for allocating transmission  
14 and distribution mains was used and accepted by the  
15 Commission in the company's last two rate cases.

16 Is that one of the reasons you believe  
17 the use of the A&P method is appropriate in this  
18 case?

19 A Yes.

20 Q Now, would you agree that the Commission  
21 has also approved in past cases the use of the MDM  
22 study to modify the allocation of peak-related

1     portion of mains?

2             A     Yes.

3             Q     Now, is it -- would you agree that one of  
4     the premises of the M -- strike that.

5                     Would you agree that one of the  
6     premises of the MDM study is that significant  
7     portions of the load of some large volume classes are  
8     not served by small diameter mains and that this fact  
9     should be recognized in the allocation process?

10            A     Yes.

11            Q     Now, could you please turn to Page 28 of  
12     your testimony. And there you state that Nicor's  
13     first objective for allocating revenues and designing  
14     rates is to ensure that Nicor Gas recovers its  
15     revenue requirement. You believe that's a valid  
16     objective?

17                             (CHANGE OF REPORTER)

18

19

20

21

22

1 (Whereupon, there was a  
2 Change of reporters.)

3 A Well, I think it's an opportunity to  
4 recover revenue requirement, but not a guarantee.

5 Q All right. So, it's a valid objective to  
6 design rates and allocate revenue so as to ensure --  
7 or have the opportunity to recover the Company's  
8 revenue requirement?

9 A Yes.

10 Q Would you agree that recovering fixed costs  
11 with fixed charges and declining block rates are more  
12 conducive to meeting that objective?

13 A Yes.

14 Q You also state at Page 28 of your direct  
15 testimony that the second and third objectives of  
16 Nicor pertain to basing rates and revenues on costs.  
17 Do you agree that those are valid objectives?

18 A Yes.

19 Q Would you agree that it could be perceived  
20 as unfair if some customers pay more than the costs  
21 that they impose on the Company and some customers  
22 pay less than their cost of service?



1           A     Yes.

2           Q     Would you agree that cost-based rates are  
3     more conducive to customers making national and  
4     efficient -- strike that -- making rational and  
5     efficient decisions on their use?

6           A     Yes.

7           Q     Is it your opinion that in allocating the  
8     revenue requirement of Nicor it is appropriate and  
9     reasonable to give some consideration to bill  
10    impacts?

11          A     Yes.

12          Q     If the Commission agrees with the idea that  
13    it is appropriate and reasonable to give some  
14    consideration to bill impacts, should that  
15    consideration necessarily be limited to a single rate  
16    class?

17          A     No.

18          Q     Would you please turn to Page 29 of your  
19    direct testimony.

20          A     Okay.

21          Q     You state there that Nicor's approach of  
22    moving residential customers only half the distance

1 the full cost of service is reasonable given the  
2 increasing economic difficulties encountered by Nicor  
3 customers as discussed in Mr. Fetter's testimony; is  
4 that correct?

5 A Well, half the distance from 95 percent of  
6 cost recoveries. So with that explanation, yes.

7 Q Now, do you know whether Mr. Fetter  
8 necessarily limited his comments about economic  
9 conditions exclusively to residential customers?

10 A I can't remember the specific quote. I  
11 know that he did indicate that customers --  
12 residential customers having difficulties with their  
13 mortgages and housing payments. I don't remember any  
14 other specific reference.

15 Q Do you remember or would you accept,  
16 subject to check, that he also talks about volatility  
17 in the gas market and current economic uncertainty in  
18 more general terms than just housing markets?

19 A I don't have any reason to say that he  
20 didn't. I don't remember.

21 Q Hang on just a second.

22 Would you accept, subject to check,

1     that in his detective testimony, which is Nicor gas  
2     Exhibit 2.0 at Page 8, he testifies, The volatile gas  
3     markets coupled with the current economic  
4     uncertainty, especially for housing markets, do not  
5     bode well for showing -- for slowing of the negative  
6     direction.

7                     And I think he's talking about the  
8     negative direction of the Company's ability to  
9     recover revenues from customers.

10            A     I'll accept that.

11            Q     Now, would you be willing to accept,  
12     subject to check, that Daimler Chrysler is a customer  
13     of Nicor? And you can check it Nicor's response to  
14     Exhibit 1.03 -- I'm sorry -- to IIEC 1.03.

15            A     Yes.

16            Q     Now, is Chrysler considered to be one of  
17     the big three in the auto industry?

18            A     Yes.

19            Q     And do you consider or are you generally  
20     aware that they're having economic problems at this  
21     time?

22            A     Yes.

1           Q     Are you aware any other industrial  
2 customers of Nicor that are having economic problems  
3 at this time?

4           A     I certainly understand that industrial  
5 customers -- you know, companies, you know, of all  
6 kind of industries are encountering difficult  
7 economic times that seem to have definitely acquired  
8 momentum in the recent period.

9           Q     Now, if we use the Nicor imbedded costs of  
10 service study as a guide, to your knowledge, which  
11 classes would receive greater percentage increases in  
12 their base rates than the residential rate class Rate  
13 1?

14          A     According to the Company's methodology as  
15 shown on Exhibit 14.3, Page 1 of 1, in terms of base  
16 rate revenues, Rate 6, Rate 75, Rate 76 and Rate 77  
17 would all receive higher percentage increases in base  
18 rates than the residential class.

19          Q     Now, is it correct that Rate 77 receives an  
20 increase of approximately 45 and a half percent?

21          A     In base rates -- I don't -- we might be  
22 looking at different iterations of the Company's

1     proposal.

2             Q     All right.  You're looking at the  
3     surrebuttal or rebuttal?

4             A     Actually, I'm just looking at from the  
5     direct case.

6             Q     What's the percentage increase shown there?

7             A     It's 62.43 percent for...

8             Q     And what would be the percentage increase  
9     shown for the residential shown there?

10            A     31.26 -- 31.36.

11            Q     Is that after the application of the  
12     residential rate cap?

13            A     Yes.

14            Q     Okay.  What I'm looking for is the  
15     percentage increases if we used only the results of  
16     the cost of service study as a guide without applying  
17     the residential rate cap?

18            A     I don't have that before me.

19            Q     Okay.  Would you accept, subject to check,  
20     that Rate 7 would receive approximately a  
21     45.5 percent increase, and Rate 1 would receive  
22     approximately a 35.9 percent increase?

1           A     Yes.

2           Q     Now, neither the Company nor the Staff has  
3     proposed to cap the increase to Rate 77 customers; is  
4     that correct?

5           A     That's correct.

6           Q     And are you -- strike that.

7                     Would you please turn to Page 30 of  
8     your direct testimony, and I'm looking at Line 640.

9           A     Yes.

10          Q     There you say that the results of this rate  
11     case are not necessarily the only strain being  
12     exerted on household budgets and that it would be  
13     reasonable to consider bill impacts in the allocation  
14     of the revenue requirement; is that correct?

15          A     Yes.

16          Q     Would you agree that the results of this  
17     rate case are not necessarily the only strain being  
18     exerted on the budgets of businesses within the Nicor  
19     service territory at this time?

20          A     Yes.

21          Q     When you say it would be reasonable to  
22     consider bill impacts in the allocation of the

1 revenue requirement among customer classes, would  
2 that consideration pertain only to classes whose  
3 revenues are curtailed, or should bill impacts also  
4 be considered when deciding which classes should be  
5 moved to more than their cost of service?

6 A It should be considered for all classes.

7 Q Would you agree that Rate 4 and Rate 74 are  
8 slated to receive the smallest percentage increase in  
9 base rates in this case?

10 A Yes.

11 Q Now, I'd like you to turn to your  
12 Exhibit 7.0, which is your rebuttal testimony,  
13 Schedule 7.04.

14 A Did you say my rebuttal testimony?

15 Q I'm sorry. Your direct testimony. Excuse  
16 me. Thank you.

17 7.04, the schedule attached to your  
18 direct testimony, Page 6 of 7.

19 Now, does this schedule at Pages 6 and  
20 7 show your proposed rate design for Rate 77?

21 A Yes.

22 Q Does this schedule show that you were

1 recommending a flat demand rate for Rate 77 as  
2 compared to a declining block demand rate that is  
3 currently in effect?

4 A Yes.

5 Q Would you agree that the Commission has  
6 approved a declining block demand rate for Rate 77  
7 for many years?

8 A Yes.

9 Q To your knowledge, has the Staff ever  
10 previously recommended a flat demand charge for Rate  
11 77?

12 A Not to my knowledge.

13 Q Now, your proposed -- would you agree that  
14 the rate design you show here for your proposed flat  
15 rate would result in an increase of 1,000 percent in  
16 the demand charge for these customers?

17 A Well, it would be a decrease in the first  
18 block demand charge, but it would be a very  
19 substantial increase in the second block.

20 Q Would you agree that that second block goes  
21 up by approximately 1,000 percent? The current  
22 charge is 2.63 cents, and I believe you're taking the



1 demand charge to \$0.29.

2 A Yes.

3 Q Will you agree that over 80 percent of Rate

4 77 demand billing units are in the second block?

5 A Yes.

6 Q And the second block is demand over

7 10,000 therms; is that correct?

8 A Yes.

9 Q Would you agree that a 1,000 percent

10 increase in the demand charge which recovers over

11 80 percent of the -- under which over 80 percent of

12 the class demand billing units are affected, is not

13 necessarily an example of gradualism?

14 A I think it's consistent with gradualism.

15 Q I'm sorry. Say that again.

16 A I think it's consistent with gradualism.

17 Q And if the tail block demand rate goes up

18 by 1,000 percent, would you agree that the revenue

19 collected from this class would be much more

20 sensitive to changes in usage patterns?

21 A It would be more sensitive.

22 Q I believe that you have indicated that you

1 are proposing a flat demand charges on the ground --  
2 or this charge in particular on the ground that it  
3 will on encourage energy efficiency; is that correct?

4 A Yes.

5 Q Have you performed any empirical studies in  
6 this case that would demonstrate or even suggest that  
7 flattening the demand rates for Rate 77 will lead to  
8 greater conservation?

9 A I haven't done any empirical studies.

10 Q Would you agree that the commodity prices  
11 for natural gas are much higher today than they were  
12 at the time of Nicor Gas's last rate case?

13 A I can't remember what the commodity price  
14 was at the time the last case, so I can't agree with  
15 that.

16 Q Did you review any historic gas prices in  
17 the preparation of your testimony?

18 A I have been -- I have looked at historical  
19 prices since the year 2000, and I notice that there  
20 have been substantial spikes in individual years,  
21 such as 2001. And I can't remember exactly where  
22 prices were in 2004 when they filed their last rate

1 case.

2 Q Did you get that information from the AGA,  
3 American Gas Association study?

4 A I think the information -- I can't remember  
5 the source of the information.

6 Q Okay. Did Staff recommend lowering Nicor's  
7 projected usage for Rate 77 if your rate design is  
8 accepted?

9 A No.

10 Q Did it lower the projected usage for any  
11 other rate in which you eliminated the declining  
12 block demand charge?

13 A No.

14 Q Now, you did review Mr. Fetter's testimony  
15 in preparing your direct testimony; is that correct?

16 A Yes.

17 Q And would you agree, subject to check, that  
18 Mr. Fetter testified at Page 5 of his direct  
19 testimony for Nicor, quote, particular challenges for  
20 LDCs include rising commodity prices for national  
21 gas, the need to enhance system infrastructure due to  
22 growth or aging, escalating costs of materials and

1 supplies, general inflationary trends within the  
2 broader national economy, and declining customer  
3 usage precipitated by higher gas prices and  
4 technology advancements related to energy efficiency.  
5 Do you agree with that statement -- or, first of all,  
6 do you accept, subject to check, that he makes that  
7 statement?

8 A Yes.

9 Q Do you agree with it?

10 A Well, there are a number of points in his  
11 statement. There's -- if you ask me one by one I  
12 could give you an answer about whether I agreed  
13 with...

14 Q Well, do you agree that rising commodity  
15 prices for natural gas represent a potential  
16 challenge for local distribution companies?

17 A Well, it's difficult to say just because a  
18 year, a year and a half ago gas was a \$1.50 a therm.  
19 Now it's 65 or \$0.70 therm. So over that time  
20 period, there's significant decline.

21 So sometimes when you make broad  
22 generalizations it's not clear how valuable they are

1 in a -- as specific point in time.

2 Q All right. Do you believe customer usage  
3 has declined due to higher gas prices?

4 A It has declined -- there are a number of  
5 factors that can determine customer usage. Also  
6 there's been a general warming of the planet and that  
7 has an impact on overall usage. So I think it would  
8 be hard to document that -- say for sure -- I can't  
9 say for sure at this point that customer usage is  
10 lower because of a rise in gas prices.

11 And you'd have to see over what period  
12 of time and -- it's difficult to isolate any one  
13 individual factor.

14 Q And you have performed no specific analysis  
15 to determine whether any of those things are correct;  
16 is that correct?

17 A That's correct.

18 Q Okay. Now, could you please turn to your  
19 Schedule 7.05 attached to your direct testimony,  
20 Staff Exhibit 7.0 at Page 12 of 12.

21 A Okay.

22 Q Now, does that page of Schedule 7.05

1     purport to show bill impacts on a hypothetical Rate  
2     77 customer or customers at various usage levels and  
3     at two different assumed load factors under your  
4     proposed rate design?

5           A     Yes.

6           Q     Would you agree that the largest customer  
7     you use in your illustration uses 500,000 therms per  
8     month?

9           A     Yes.

10          Q     Is that the equivalent of 6 million therms  
11     per year?

12          A     Yes.

13          Q     Would you accept, subject to check, that  
14     the test year usage for Rate 77 class is almost 367  
15     million therms?

16          A     Yes.

17          Q     Would you accept, subject to check, that  
18     there are 31 customers in that class?

19          A     Yes.

20          Q     Would you accept, subject to check, that  
21     that equates to almost 11 million therms per year for  
22     the average customer?

1           A     Yes.

2           Q     And that's almost twice as large as the  
3     largest customer you show on your illustrative bill  
4     impact analysis here in 7.05; is that correct?

5           A     Yes.

6           Q     Now, your testimony in exhibits do not  
7     address how your proposal would affect individual  
8     customers on Rate 77; is that correct?

9           A     It does not provide any further bill  
10    impacts beyond what's provided here.

11           MR. ROBERTSON:   That's all I have.

12                     Thank you, Mr. Lazare.

13           JUDGE SAINSOT:   Any redirect?

14           MS. VONQUALEN:   Judge, could we have just a  
15    couple minutes?  It won't take very long.

16           JUDGE SAINSOT:   We could also brake for lunch.

17           MS. VONQUALEN:   I think he's signaling me he'd  
18    like just a very short break now so he can know he's  
19    finished.

20           JUDGE SAINSOT:   Sure.

21                     (Whereupon, a break was taken.)

22           JUDGE SAINSOT:   Okay.  We're back on the record

1 with our redirect I take it.

2 MS. VONQUALEN: Thank you.

3 REDIRECT EXAMINATION

4 BY

5 MS. VONQUALEN:

6 Q Mr. Lazare, do you recall Mr. Robertson  
7 asking you about whether a 1,000 percent increase in  
8 the tail block demand charge for Rate 77 customers is  
9 consistent with gradualism?

10 A Yes.

11 Q And you said that you thought it was?

12 A Yes.

13 Q Can you explain your answer.

14 A Yes? According to the Company's --  
15 according to IIEC's witness, Mr. Rosenberg, the total  
16 base rates per therm for customers in Rate 77 is 3.2  
17 cents per therm. So that's the average cost of base  
18 rates per therm for customers in the class.

19 The average market price for natural  
20 gas today is about \$0.65 a therm. So the 3.2 cents  
21 represents less than 5 percent of that average market  
22 price for natural gas.



1                   So whatever base rates Mr. Robertson's  
2   customers -- our clients would pay for natural gas it  
3   would be dwarfed by the price of the gas itself. So  
4   I do not consider, when you look at the overall  
5   bills, this to be inconsistent with a principle of  
6   gradualism.

7           MS. VONQUALEN: Thank you, Mr. Lazare.

8                   I have no more questions.

9                   RECROSS-EXAMINATION

10                  BY

11                  MR. ROBERTSON:

12           Q     Mr. Lazare, have you ever manufactured  
13   anything?

14           A     You mean, that's not edible or drinkable?  
15   Yes.

16           Q     Okay. Let me ask you, do you know -- or  
17   would you agree that in -- well, strike that.

18                   If a manufacturer deals with the costs  
19   that are imposed upon him as a function of how does  
20   it impact the margin on the products they sell,  
21   wouldn't what appears to be relatively small  
22   increases in utility bills potentially have a large

1     impact on the manufacturer's margin on his product?

2           A     It's difficult to respond to that question  
3     without looking at the specific case and looking  
4     about the individual problem for a manufacturer to  
5     say whether or not a particular marginal increase in  
6     a utility bill would be significant for that process.

7           Q     Would you agree that from the  
8     manufacturer's point of view that's a legitimate  
9     point of view?

10          A     Well, certainly costs are a huge factor  
11     for --

12          Q     So, for example, if a steel manufacturer  
13     was making a dollar per ton on the steel that it  
14     produced and the increase in its gas bill was such --  
15     that its gas bill for delivery of gas was such that  
16     that margin was reduced by 25, 30 percent, even  
17     though it was only \$0.50, that would still be a  
18     relatively large deal from his point of view, would  
19     it not?

20          A     Based upon your hypothetical, if that was  
21     the impact, yes.

22          Q     Has the Staff, in your experience, ever

1 given any consideration to that in its rate design  
2 recommendations in this case?

3 A Yes, we've been -- considered the impacts  
4 for all customers and try to come up with the with  
5 the most reasonable --

6 Q No, I'm not talking about the impact for  
7 all customers. I'm talking about the impact -- that  
8 kind of impact on the manufacturing community in the  
9 Nicor service territory, not your bill impact  
10 analysis that you did in this case.

11 A Well, we base our decision on the evidence  
12 in the case. And if IIEC, for example, had evidence  
13 to show that this kind of -- the rate design I  
14 proposed was going to have adverse impacts on the  
15 margins and profits of individual clients or other  
16 producers, it would be worth our while to review the  
17 evidence and then to make our decisions accordingly.

18 But that's the evidence that we  
19 reviewed, and based upon that we made what we  
20 considered the most reasonable recommendation for  
21 rates in this case.

22 And it has to remember, too, that even

1 with the limitations put on the residential class in  
2 this case the Company's original proposal still asks  
3 that 4 out of \$5 of their proposed increases come  
4 from residential customers.

5 So it's not like everything's being  
6 put on nonresidential customers and residential  
7 customers are getting a break here.

8 Q We're talking about the impact of your rate  
9 design change, not the Company's revenue allocation.

10 And, so, as far as you're concerned,  
11 it has -- the dollar impact on the total delivery  
12 service rate, it could go up 5,000 percent and as  
13 long as it was a relatively small percentage of that  
14 customers's total gas cost, in your opinion, it  
15 wouldn't have any significant impact on the customer?

16 A I'd have to look at each case. But my  
17 conclusion regarding the specific rate is that these  
18 customers -- given the overall cost of gas, this is  
19 not, I believe, an onerous rate for them to pay.

20 Q So as much as a triple digit increase in  
21 the customer's delivery service rate would make no  
22 difference as long as it's a relatively small

1 percentage of whatever the commodity price for gas  
2 is?

3 A I didn't say it would make no difference.  
4 I'm just saying that I don't consider it to be  
5 inconsistent with the concept of gradualism.

6 Q The concept of gradualism here, as applied,  
7 is looking at bill impacts, and -- is it looking at  
8 the impact on a customer's total bill?

9 A In this case, in order to make a relevant  
10 comparison, it's the total bills for all customer  
11 classes or my best approximation of the total bills.  
12 And given my best approximation for large customers,  
13 I do not consider this to be inconsistent with  
14 gradualism.

15 Q All right. And I don't suppose there's  
16 anything I'll say or ask you today that's going to  
17 get you to change your mind on that position, so I'll  
18 stop.

19 MR. ROBERTSON: I have nothing further.

20 JUDGE SAINSOT: Any redirect?

21 MS. VONQUALEN: No. Thank you.

22 JUDGE SAINSOT: Okay. Thank you very much

1 Mr. Lazare.

2 And now we're breaking for lunch.

3 1:30.

4 (Whereupon, a lunch break was  
5 taken.)

6 AFTERNOON SESSION

7 JUDGE SAINSOT: We're back on the record in  
8 Docket No. 08-0363. It is the matter of Northern  
9 Illinois Gas Company doing business as Nicor Gas  
10 Company, and it concerns a proposed general increase  
11 in natural gas rights.

12 Okay. We have Mr. Brightwell here?

13 THE WITNESS: Yes, your Honor.

14 (Witness sworn.)

15 DAVID BRIGHTWELL,  
16 called as a witness herein, having been first duly  
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY

20 MS. VONQUALEN:

21 Q Good afternoon, Mr. Brightwell.

22 A Good afternoon.

1           Q     Please state your name and for the record  
2     and spell your last name.

3           A     David Brightwell, B-r-i-g-h-t-w-e-l-l.

4           Q     Who is your employer, and what is your  
5     business address?

6           A     I work for the Staff of the Illinois  
7     Commerce Commission. Business address is 527 East  
8     Capitol Avenue, Springfield, Illinois 62701.

9           Q     What is your position at the Commission?

10          A     I'm an economic analyst in the Policy  
11     Program.

12          Q     Mr. Brightwell, did you prepare testimony  
13     to be submitted in this proceeding?

14          A     Yes.

15          Q     Do you have before you a document which has  
16     been identified as ICC Staff Exhibit 13?

17          A     Yes.

18          Q     Direct testimony of David Brightwell.

19          A     Yes.

20          Q     Did you prepare that document to be  
21     submitted in this proceeding?

22          A     Yes.

1           Q     Do you have additions or corrections to ICC  
2     Staff Exhibit 13?  
3           A     No.  
4           Q     You also have before you a document which  
5     has been marked as ICC Staff Exhibit 25.0, rebuttal  
6     testimony of David Brightwell.  
7           A     Yes.  
8           Q     Did you prepare that testimony to be  
9     presented in this proceeding?  
10          A     Yes.  
11          Q     Do you have any additions or corrections to  
12     make to ICC Staff 25.0?  
13          A     No.  
14          Q     Mr. Brightwell, if I were to ask you the  
15     same questions today as are contained within ICC  
16     Staff Exhibit 13.0 and ICC Staff Exhibit 25.0, would  
17     your answers be the same?  
18          A     Yes.  
19          Q     And is the information contained in  
20     Exhibits 13.0 and 25.0 true and correct to the best  
21     of your knowledge?  
22          A     Yes.



1 MS. VONQUALEN: Thank you.

2 At this time I move for admission into  
3 evidence of ICC Staff Exhibit 13.0, direct testimony  
4 of Dave Brightwell and also ICC Staff Exhibit 25.0,  
5 which is the rebuttal testimony.

6 I notes that ICC Staff Exhibit 25.0  
7 has an exhibit attached as 25.1.

8 JUDGE SAINSOT: Any objection to admission of  
9 Mr. Brightwell's testimony and the attachment?

10 Hearing none, your motion is granted  
11 and ICC Staff Exhibit 13.0, 25.0 and 25.1 are entered  
12 into evidence.

13 (Whereupon, ICC Staff Exhibit  
14 Nos. 13.0, 25.0 and 25.1 were  
15 admitted into evidence.)

16 JUDGE SAINSOT: Okay. Who would like to  
17 commence the cross-examination?

18 MS. LUSSEN: Thank you, Judge.

19 CROSS-EXAMINATION

20 BY

21 MS. LUSSEN:

22 Q Good afternoon, Mr. Brightwell.

1           A     Good afternoon.

2           Q     If you could turn to Page 6 of your  
3 testimony, Line 124.

4           A     Are you referring to --

5           Q     I'm sorry. Your direct testimony.

6           A     That was Page 6?

7           Q     Yes.

8                     At Line 124 you reference  
9 Mr. O'Connor's testimony regarding reduced  
10 weather-normalized gas consumption for space heating  
11 use in the test year. And you state at Line 128 that  
12 this indicates that Nicor customers are adopting  
13 conservation efforts without the assistance of Nicor  
14 programs. Do you see that?

15          A     Yes.

16          Q     Did you perform any analysis to determine  
17 what the root causes to this alleged reduction in  
18 natural gas usage are?

19          A     No, I haven't.

20          Q     So you don't know, do you, whether the  
21 alleged reduction is due to conservation,  
22 affordability of rates, energy efficiency purchases,

1 building improvements or any other cause?

2 A No, I don't.

3 Q Have you performed any study or empirical  
4 analysis to determine the affordability of energy  
5 efficiency measures for homeowners and/or apartment  
6 dwellers in Nicor service territory?

7 A No, I haven't.

8 Q Have you performed any analysis to  
9 determine the level of awareness among Nicor's  
10 customers as to the kind of energy efficiency  
11 measures that can be undertaken to reduce natural gas  
12 usage?

13 A No, I haven't.

14 Q Have you conducted a study to determine the  
15 level of knowledge in Nicor service territory as to  
16 what is an economically rational energy efficiency  
17 investment for them?

18 A No.

19 Q Would you agree that the kind of housing  
20 stock that customers reside in affects their  
21 decisions as to whether or not to invest in energy  
22 efficiency measures?

1           A     When you say the housing stocks affects  
2     their decisions, I'm not sure that I follow.

3           Q     For example, whether or not they live in  
4     apartment buildings -- landlord owned apartment  
5     buildings, whether they live in single family  
6     residence, et cetera.

7           A     I think there would be differences that --  
8     I can't see a tenent making energy efficient  
9     investments in somebody else's property.

10          Q     And have you performed any sort of study or  
11     empirical analysis to determine the approximate  
12     percentage of Nicor's customers who reside in  
13     apartments or standalone homes?

14          A     No, I haven't.

15          Q     At Page 8 of your direct testimony,  
16     Line 164, you state that if customers expect gas  
17     prices to remain high for the next few years many  
18     projects, such as replacing a water heater, become  
19     economically viable. Do you see that?

20          A     Yes, I do.

21          Q     Have you done any analysis of the price  
22     differential between standard natural gas appliances

1 and the more energy efficient versions of those same  
2 appliances?

3 A No, I haven't.

4 Q Have you done any analysis of the income  
5 level of Nicor Gas customers?

6 A No, I haven't.

7 Q Do you know how many are low income or to  
8 the extent to which there is a need for financial  
9 assistance with energy efficiency purchases?

10 A I believe in Miss Nichols testimony she  
11 referenced that about 3 percent of the customers in  
12 the Nicor area have LIHEAP funding.

13 Q And outside of that 3 percent subset of the  
14 residential customer class, have you performed any  
15 analysis as to income breakdowns within  
16 residential -- the residential class?

17 A No, I haven't.

18 Q You also state at Line 167, Page 8, that  
19 given the heightened awareness surrounding energy  
20 costs and the increased economic viability of many  
21 projects, there are likely to be more free riders  
22 than if the price of natural gas was lower. Do you

1     see that?

2           A     Yes, I do.

3           Q     You would agree, wouldn't you, that the

4     price of natural gas fluctuate year to year?

5           A     Yes.

6           Q     And have you done any study to determine

7     the degree of what you call heightened awareness

8     surrounding energy costs among Nicor customers?

9           A     No, this was based primarily on readings of

10    newspapers and comments that I had seen.

11          Q     At the bottom of Page 8 and the top of

12    Page 9 you state that the direct benefit to customers

13    who aren't receiving funds from energy efficiency

14    programs is negligible. Do you see that?

15          A     Yes, I do.

16          Q     You would agree, wouldn't you, that there

17    are examples -- there are other examples of utility

18    expenses where the Company recovers expenditures from

19    all rate payers but the benefits of those

20    expenditures only directly accrue to a subset of rate

21    payers?

22          A     I don't have -- I don't have knowledge of

1       that specifically. It sounds reasonable, though.

2           Q     For example, with respect to uncollectables  
3       expense of a utility, would you agree that with that  
4       particular expense all rate payers are paying for a  
5       utility expenditure that benefits a subset who aren't  
6       necessarily paying for their full utility's cost of  
7       service?

8           A     Are you saying that -- that the portion  
9       that isn't paying is being subsidized by the portion  
10      that is paying?

11          Q     To a certain extent, yes.

12          A     I would agree with that.

13          Q     And with respect to infrastructure  
14      improvements, would you agree that if the Company  
15      replaces a main or installs a new service line in Oak  
16      Park, a resident of -- a customer of Nicor living in  
17      Plainfield doesn't necessarily directly benefit from  
18      that infrastructure --

19          A     I'm not from the Chicago area. I don't  
20      know where Plainfield is.

21          Q     That's fair enough. Let me restate the  
22      question then.

1                   Would you agree that if the Company  
2     installs a main in one location in the Chicago area  
3     and that a customer residing 40 miles away in another  
4     part of Nicor service territory doesn't necessarily  
5     benefit from that infrastructure investment?

6           A     That sounds reasonable.

7           Q     At Page 11 of your direct testimony,  
8     Line 217, you state that the price of an item is  
9     among the most important determinants of the amount  
10    that is purchased and consumed. Do you see that?

11          A     Yes.

12          Q     You state that higher prices lead to fewer  
13    purchases and lower prices to more purchases in the  
14    next sentence; is that correct?

15          A     Yes.

16          Q     Now is it correct to assume there that  
17    you're talk about the price of natural gas in those  
18    instances?

19          A     I'm talking inspecific. What I'm referring  
20    to is basically referred to as the Law of Demand.

21          Q     So that is more from a general economic  
22    perspective?



1           A     Yes.

2           Q     And would you agree that that general and  
3     economic principle likely applies to the purchase of  
4     energy efficiency measures and appliances?

5           A     Yes.

6           Q     For example, the more affordable an  
7     appliance is, the more likely a customer is to  
8     purchase it and vice-versa?

9           A     Affordable is a subjective term. I would  
10    prefer to say that the lower price of it, that -- the  
11    more likely; and the higher the price, the less  
12    likely.

13          Q     Okay. And then looking at Lines 291  
14    through 292 on Page 15 of your direct testimony.

15          A     Which lines?

16          Q     291 through 292. It's a series of  
17    questions dealing with your recommendations regarding  
18    the structure of the energy efficiency program.

19          A     Okay.

20          Q     There you state that Nicor would distribute  
21    money to the Board. Do you see that?

22          A     Yes.

1           Q     Now when the Attorney General's Office  
2     asked you about that statement in a data request is  
3     it correct that you responded that that was based on  
4     a misinterpretation on your part of Mr. O'Connor's  
5     testimony?

6           A     I said it may have been a  
7     misinterpretation.

8           Q     Okay. Is it your understanding that the  
9     Advisory Board would be -- that Nicor Gas would  
10    disburse funds to the Advisory Board?

11          A     Initially that was upon the data request.  
12    I'm not exactly sure how the distribution would take  
13    place.

14          Q     Now, you've read Miss Nichols testimony in  
15    this proceeding, haven't you?

16          A     Yes.

17          Q     And is it correct that she has indicated  
18    that under Nicor's proposal the Company would act as  
19    the fiscal agent and pay all invoices with respect to  
20    this program?

21          A     I believe that's correct.

22          Q     Now, it's also true, isn't it, that Nicor's

1 proposed structure is modeled after the Government's  
2 Board structure that was approved by the Commission  
3 in the People's Gas North Shore rate case earlier  
4 this year; is that correct?

5 A Yes.

6 Q Now, I assume -- and correct me if I'm  
7 wrong -- that you've discussed the operation of that  
8 structure with Gene Beyer from the ICC who sits as a  
9 nonvoting member of the Government's Board for that  
10 program; is that true?

11 A Yes.

12 Q Would you say that you're familiar with the  
13 operation of that program?

14 A I've reviewed a few of the minutes and had  
15 conversations with Gene regarding various issues. I  
16 wouldn't say that I'm intimately familiar but that I  
17 have some knowledge of it.

18 Q Would you agree that Peoples Gas is the  
19 fiscal agent in that program and pays all invoices  
20 associated with the program, if you know?

21 A I don't know.

22 Q If you know, would you agree that Peoples

1 Gas is the contracting party with all persons hired  
2 by the Government's Board to work on the program?

3 A I'm sorry. The contracting?

4 Q Yes. That Peoples Gas signs all of the  
5 contracts with any subcontractors.

6 A I don't know.

7 Q Line 295 of your testimony on Page 15, you  
8 state that ratepayer money would be spent on projects  
9 by a group over whom the Commission has no authority.  
10 Do you see that?

11 A Yes.

12 Q The Commission has authority in this case  
13 over Nicor; is that true?

14 A Yes.

15 Q And in this docket, Nicor has volunteered  
16 to cede its decision-making authority on the  
17 substance of the program to a five-member advisory  
18 board in which it will have one vote. Is that your  
19 understanding of the program?

20 A My understanding is that it's ceding that  
21 authority but that it believes that it should not be  
22 held accountable for the -- fiscally accountable for

1 the actions that the Board takes.

2 Q Would you agree that the Commission  
3 maintains the authority to order the Company to stop  
4 collecting funds for energy efficiency programs at  
5 any time?

6 A I believe that's correct.

7 Q And would you agree, wouldn't you, that the  
8 Commission could initiate its own docket to end any  
9 ratepayer financing of energy efficiency programs,  
10 would you agree?

11 A Yes.

12 Q On the bottom of Page 15 and the top of  
13 Page 16 you question the accountability of the  
14 program.

15 A Yes.

16 Q Now, you indicate -- you reference that if  
17 the Commission agrees with the Company's position  
18 that it is not to be held responsible for any  
19 imprudent expenditure within the energy efficiency  
20 program, at that point in the testimony. Do you see  
21 that?

22 A Right.

1           Q     How do you define imprudent there?

2           A     My definition of imprudent goes beyond what  
3     Mr. Kubert said. I believe his example was that  
4     there's -- the Board decides to take a trip to  
5     Argentina to see energy efficiency programs. I would  
6     agree with Mr. Kubert that if there is a reasonable  
7     expectation that a program would be successful and it  
8     just happens to not be successful, that that  
9     shouldn't be deemed as an imprudent expenditure.

10                     However, if there's reason to believe  
11     or with reasonable research would -- one would expect  
12     for a program to be unsuccessful and that it was  
13     still authorized as an expenditure, I believe that  
14     that would be an example of an imprudent expenditure.

15           Q     Now, would you agree that under Nicor's  
16     proposal there would be a program evaluator who would  
17     perform periodic audits on the performance of the  
18     energy efficiency programs and would prepare annual  
19     reports for the Advisory Board?

20           A     I'm not sure about that. My impression was  
21     that there would be an evaluation at the end of the  
22     pilot.

1           Q     Well, if I could, I will -- by chance do  
2     you have with you today Ms. Nichols' testimony?

3           A     Yes, I do.

4           Q     If you could turn to Page 9 of her direct  
5     testimony, Line 195 through 197.

6           A     Okay.

7           Q     So you agree that as proposed by Nicor a  
8     program evaluator would perform periodic audits on  
9     the performance of the energy efficiency programs  
10    within the plan against criteria established by the  
11    Advisory Board and then prepare annual reports for  
12    the Board?

13          A     Yes.

14          Q     And would you assume that those reports  
15    would be filed with the Commission on an annual  
16    basis?

17          A     I don't know.

18          Q     Would you agree that the Commission could  
19    make that a part of the order in this case that those  
20    reports be filed with that Commission?

21          A     Yes, I'd agree to that.

22          Q     And Nicor's proposed structure also calls

1 for a third-party review within 24 months after  
2 Commission approval of the programs, doesn't it? And  
3 that --

4 A I believe that's correct.

5 Q I'm sorry?

6 A I believe that's correct.

7 Q And that's indicated on Page 11 of  
8 Ms. Nichols' testimony.

9 And is it also true that that review  
10 would audit and confirm that plan expenditures are  
11 benefiting Nicor customers and not endusers outside  
12 of the Company's service territory?

13 MS. VONQUALEN: Miss Lusson, do you have a  
14 citation for testimony for that?

15 MS. LUSSON: Sure. That, I believe, Page 11,  
16 lines 244 through 246.

17 THE WITNESS: Yes.

18 BY MS. LUSSON:

19 Q Now, as I understand your testimony, you  
20 recommend that if the Commission approves the Nicor  
21 proposed energy efficiency program that the  
22 Commission adopt the structure used for Commonwealth



1 Edison, Ameren and Ameren Electric Utilities; is that  
2 correct?

3 A What I'm proposing is that they adopt  
4 something similar to that in the sense that the  
5 Company is ultimately responsible for the decisions  
6 made and can be held -- reasonably held accountable  
7 for the -- any findings of imprudence that may occur.

8 Q And is the setup that you're referring to  
9 there the stakeholder advisory group that's a part  
10 of -- that was established as a part of those  
11 dockets?

12 A Again, I'm referring to that it does  
13 something similar to that where it gives  
14 accountability as placed upon the Company itself,  
15 whether there is an opportunity for feedback for  
16 interested parties that have knowledge and expertise.

17 Q And are you a participant in the ongoing  
18 stakeholder advisory group proceedings?

19 A I have attended to teleconferencing three  
20 or four of the meetings.

21 Q Okay. And how many meetings in total would  
22 you estimate have occurred?

1           A     I don't know. I believe there's about one  
2 every -- maybe once a month or once -- twice a month.

3           Q     And is it correct that the orders in that  
4 docket were issued back in February?

5           A     I'm not sure the date that they were  
6 issued.

7           Q     And, if you know, would you agree that  
8 ComEd and Ameren are not required by statute or  
9 Commission order to adopt and implement the  
10 particular recommendations of the stakeholder  
11 advisory group?

12          A     Can you repeat the question.

13          Q     Sure.

14                    Would you agree that ComEd and Ameren  
15 are not required by either statute or the  
16 Commission's order to necessarily adopt and implement  
17 the recommendations of the stakeholder advisory  
18 group?

19          A     I believe that's correct.

20          MS. LUSSON: Thanks, Mr. Brightwell.

21                    No further questions.

22

1 CROSS-EXAMINATION

2 BY

3 MR. KELTER:

4 Q Good afternoon, Mr. Brightwell. My name's  
5 Rob Kelter. I'm an attorney for the Environmental  
6 Law and Policy Center.

7 I'd like to talk with you for a minute  
8 about your background. You joined the Commission in  
9 June 2, 0008; is that correct?

10 A Yes, sir.

11 Q And your resume doesn't indicate that you  
12 have any first-hand experience working with energy  
13 efficiency programs; is that correct?

14 A That is correct.

15 Q And do you have any experience working  
16 directly with energy efficiency programs?

17 A No, I don't.

18 Q Was this a specific area of concentration  
19 for you in graduate school?

20 A Energy efficiency programs specifically  
21 were not. I did research in energy markets that to  
22 some extent had energy efficiency concerns within the

1 reason search that I did.

2 Q Have you examined any specific energy  
3 efficiency programs in other states?

4 A In the course of preparing for testimony  
5 here, I evaluated the reports that were available on  
6 the Iowa Utility Board's website.

7 Q So you didn't look at Minnesota or  
8 Wisconsin or any of the other states in the region  
9 that have efficiency programs?

10 A No.

11 Q Turning to your direct testimony -- and I  
12 think all of my questions refer to your direct  
13 testimony, if I forget to specify direct.

14 Turning to Page 5, at Line 101 you ask  
15 the question, Why should the Commission reject  
16 Nicor's Energy Efficiency Plan after previously  
17 approving a similar plan for Peoples and North Shore  
18 Gas; is that correct?

19 A That's essentially what the question asks.

20 Q And then at Line 103 you answer the  
21 question that you provide new evidence about the  
22 effectiveness of markets for providing strong

1 incentives to encourage conservation; is that  
2 correct?

3 A Yes.

4 Q Now, is Mr. O'Connor's testimony regarding  
5 reduced usage in Nicor's service territory and  
6 combined with the AGA study you discuss in subsequent  
7 pages of your testimony the basis for that statement?

8 A It's part of the basis for that statement.  
9 The additional basis for that statement includes --  
10 let me see if I can find it here -- includes Figure 2  
11 on Page 12 of my direct testimony.

12 Basically, what Figure 2 indicates is  
13 that these other programs that have had energy  
14 efficiency programs that have been lauded for their  
15 success are showing -- that Illinois customers are  
16 showing similar decreases in usage that these  
17 customers are despite the fact that million of  
18 dollars are not being spent in Illinois on energy  
19 efficiency programs.

20 Q Turning to Page 6, Line 124, you note that  
21 heating use declined from 183 therms in 2004 to 1,088  
22 in the 2009 test year; is that correct?

1           A     Yes.

2           Q     Is there any evidence in the record as to  
3 why you usage declined?

4           A     Not to my knowledge.

5           Q     I want to show you a document from the  
6 Energy Information Administration.

7                     Mr. Brightwell, looking down that  
8 first column, a few rows down it says, Midwest; and  
9 then it says, Expenditures. Are you aware that  
10 according to the Energy Information Administration  
11 during this same period, from 2004 to 2009, the  
12 average expenditure by customers in the Midwest on  
13 their heating bill went from \$750 per year to \$1,003  
14 per year?

15           MS. VONQUALEN: I object to this question. I  
16 don't believe any foundation has been laid for  
17 Mr. Brightwell to testify regarding this document.

18           JUDGE SAINSOT: Mr. Kelter, it's 1,008 to start  
19 off with.

20                     Could you --

21           MR. KELTER: Actually, the forecast is 1003 for  
22 '08 and '09, your Honor.

1 JUDGE SAINSOT: No. Right. Okay. I'm looking  
2 at the wrong number.

3 MR. KELTER: And that was his -- his comparison  
4 was from 2004 to the test year, 2009.

5 JUDGE SAINSOT: You're going to have to lay a  
6 little foundation, though. I think she's correct.  
7 So...

8 BY MR. KELTER:

9 Q Mr. Brightwell, are you familiar with the  
10 Energy Information Administration?

11 A Yes, I am.

12 Q And are you familiar with the work that  
13 they do analyzing prices and predicting prices?

14 A Yes, I am.

15 Q Are you aware that according to the Energy  
16 Information Administration during this same period  
17 that you discuss in your testimony, from 2004 to the  
18 test year 2009, that expenditures went up from \$750  
19 to \$1,003 per year?

20 MS. VONQUALEN: Excuse me. Mr. Kelter, are you  
21 asking him if he's independently aware of that, or  
22 are you asking him to look at this document and

1     testify to that?

2             MR. KELTER:   Well, first, I'm asking if he was  
3     aware of that before he submitted his testimony.

4             THE WITNESS:   No, I wasn't.

5     BY MR. KELTER:

6             Q     And would you agree that that's what this  
7     document indicates those prices are?

8             MS. VONQUALEN:   Again, I object.   I don't think  
9     we have yet established what this document is or  
10    whether Mr. Brightwell is aware of what it is.

11            JUDGE SAINSOT:   She's correct.   Just lay the  
12    foundation for what this document represents.

13    BY MR. KELTER:

14            Q     Mr. Brightwell, would you agree that this  
15    document represents the selected U.S. average  
16    consumer prices and expenditures for heating fuels  
17    during the winter?

18

19

20

21

22



1 (Whereupon, there was  
2 a change of reporter.)  
3 A That appears to be what it represents.  
4 Q And this is from the Energy Information  
5 Administration Short-Term Energy Outlook from  
6 November 2008?  
7 A That appears to be correct.  
8 Q All right. I'm going to ask the question  
9 again.  
10 Do you want me to ask both questions  
11 again?  
12 JUDGE SAINSOT: I don't think we care.  
13 THE WITNESS: I think I would like you to ask  
14 both questions again.  
15 MR. KELTER: Okay.  
16 BY MR. KELTER:  
17 Q Were you aware before looking at this  
18 document that according to the Energy Information  
19 Administration, during this same period the average  
20 expenditure by customers in the Midwest on their  
21 heating bill went from \$750 per year for the winter  
22 '03, '04 to a projected \$1,003 for the winter of '08

1 and '09?

2 A I was not aware of this, but this does not  
3 surprise me either.

4 In my testimony, I said that prices  
5 are amongst the factors that need reduce usage, and  
6 this would indicate that there has been an increase  
7 in price and that the usage decrease is admitted, at  
8 least partially, in response to that.

9 Q And it would indicate that consumers are  
10 paying significantly more today for their gas in the  
11 winter than they were in the winter of '03, '04,  
12 correct?

13 A Yes.

14 Q Turning to Page 16 of your testimony, at  
15 Line 324, you state in an answer to a question  
16 regarding Rider EEP, that customers who receive  
17 funding and institute conservation measures have  
18 lower gas bills, correct?

19 A Yes.

20 Q And you continue a couple lines later:  
21 "That this could be the difference in space heating  
22 being affordable or not," correct?

1           A     Yes.

2           Q     At Page 7, Line 139 of your testimony, you  
3     state that the AGA study that you rely on indicates  
4     that there is a nationwide trend for residential  
5     customers to employ conservation measures, and that  
6     the degree of conservation increases as natural gas  
7     prices increase; is that correct?

8           A     I remember saying something along those  
9     lines.

10                     Could you tell me which lines you're  
11   referring to.

12           JUDGE SAINSOT:   And us, as well.

13           MR. KELTER:   At Page 7, Line 139.

14   BY MR. KELTER:

15           Q     You state the AGA study indicates that  
16   there is a nationwide trend for residential customers  
17   to employ conservation measures and that the degree  
18   of conservation increases as natural gas prices  
19   increase, correct?

20           A     That's correct.

21           Q     The AGA study doesn't address the effect of  
22   energy efficiently on usage, does it?

1           A     Not specifically.

2           Q     In fact, the AGA study doesn't reach any  
3           conclusions at all regarding the effectiveness of  
4           energy efficiency programs, does it?

5           A     No.

6           Q     Do you have that AGA study with you?

7           A     Yes, I do.

8           Q     Could you turn to Page 6 of that study.

9           JUDGE SAINSOT: Mr. Kelter, do you have a copy  
10          of that study for us?

11          MR. KELTER: Yes, I do.

12          JUDGE SAINSOT: Thanks.

13          BY MR. KELTER:

14          Q     Going down to the second full paragraph,  
15          this states that other factors that impact  
16          residential energy use are the main programs that  
17          encourage consumers to save energy, correct?

18          A     Are you referring to the paragraph that  
19          starts with "the results from analyzing"?

20          Q     No, it's the next paragraph.

21          A     It begins with other --

22          MS. VON QUALEN: What page are we on?

1           MR. KELTER:   Page 6.

2           THE WITNESS:   The paragraph that begins with

3   "other factors"?

4           MS. VON QUALEN:   I'm afraid I don't have a

5   Page 6.

6           JUDGE SAINSOT:   I just have odd.

7           MS. VON QUALEN:   I have 5 of 7.

8           MR. KELTER:   You just have 5?

9           MS. VON QUALEN:   Can I just stand over your

10   shoulders?

11          MR. KELTER:   Sorry about that.

12          JUDGE SAINSOT:   Do you have one with the odd

13   pages in it?

14          MR. KELTER:   Yeah.

15          JUDGE SAINSOT:   Why don't we take a 5-minute

16   break and you can use the Xerox machine.

17          MR. KELTER:   Okay.   Sorry about that.

18          JUDGE SAINSOT:   No problem.   That's what Xerox

19   machines are for.   It's not like it's a huge

20   document.

21                               (Whereupon, a recess was taken.)

22   BY MR. KELTER:

1           Q     Do you see that paragraph that starts with  
2     "other"?

3           A     Yes, I have read it.

4           Q     It reads other factors that impact  
5     residential energy use are the many programs that  
6     encourage consumers to save energy, correct?

7           A     Correct.

8           Q     Then that second bullet point continues:  
9     "State and local governments also encourage  
10    efficiency through similar programs," correct?

11          A     Correct.

12          Q     So would you agree that the study did not  
13    take into consideration these other impacts?

14          A     It acknowledges that these other impacts  
15    exist. The econometric models, if I recall  
16    correctly, do not specifically account for energy  
17    efficiency programs.

18          Q     Are you aware of how much Nicor now spends  
19    on energy efficiency programs?

20          A     No, I'm not.

21          Q     And are you aware of how much Nicor  
22    customers now invest in energy efficiency on their

1 own?

2 A No, I'm not.

3 Q Would you agree that customers in recent  
4 years have turned down their thermostats?

5 A Can you repeat the question.

6 Q Would you agree that Nicor customers in  
7 recent years have turned down their thermostats?

8 A I don't have knowledge of the behavior of  
9 Nicor customers.

10 Q But you agree that there has been  
11 conservation efforts in Nicor service territory,  
12 correct?

13 A Correct.

14 Q Is it not possible that some customers in  
15 Nicor's service territory may be uncomfortably cold  
16 due to their conservation efforts?

17 A I would agree that it's possible.

18 Q Should the Commission be concerned about  
19 the comfort and safety of customers when the  
20 temperatures in Northern Illinois become frigid?

21 A I believe it should.

22 Q In your testimony, you used the term

1 "conservation" several times. Is will a distinction  
2 in your mind between conservation and energy  
3 efficiency?

4 A In my mind, reduced usage is conservation.

5 I acknowledge that there is various  
6 ways to get that through short-term effects; such as  
7 turning down the thermostat, or longer-term effects  
8 of increasing the insulation in your house, the  
9 efficiency of your furnace.

10 Q And would the increasing the insulation of  
11 your house or improving the efficiency of your  
12 furnace, would those be energy efficiency measures?

13 A Yes.

14 Q Turning to Page 8 of your testimony, at  
15 Line 160, you expressed concerns about free-riders  
16 taking advantage of an energy efficiency program,  
17 correct?

18 A Correct.

19 Q And at page -- on the same page, at  
20 Line 164, you further express that if customers  
21 expect gas prices to remain high for the next few  
22 years, many projects such as replacing a furnace or



1 water heater become economically viable because the  
2 lifetime energy savings are sufficient to cover the  
3 upfront costs, correct?

4 A Correct.

5 Q Do you have any analysis that supports that  
6 position?

7 A No, this is based on economic reasoning.

8 Q Do you have any idea what payback period  
9 customers typically are seeking when they're  
10 considering buying more efficient gas appliances?

11 A No, I don't.

12 Q Would you disagree with the position that  
13 if an energy efficiency program could lower those  
14 paybacks on an appliance, such as a furnace, that  
15 more customers would be likely to invest in such an  
16 appliance?

17 A I'm sorry?

18 Q Would you disagree with the position that  
19 if an energy efficiency program would lower those  
20 paybacks for customers, that they would be more  
21 likely to invest in such energy efficient appliances?

22 A To the extent that they would not have

1     invested in those appliances unless there was an  
2     energy efficiency program, they would not be  
3     categorized as a free rider.

4                     For the individuals that because of  
5     the higher prices were perfectly fine to do this on  
6     their own, but they're using funds of the energy  
7     efficiency program now that there would still be  
8     those as free-riders.

9             Q     All right.  So absent -- factoring out  
10    free-riders, would you agree that there is some  
11    customers out there who would be more likely to  
12    invest in an energy-efficient furnace if the payback  
13    period was reduced?

14            A     Yes.

15            Q     Now, you were here during the  
16    Cross-Examination of ELPC Witness Kubert regarding  
17    the Peoples Gas Operating Committee and Governance  
18    Board on Monday, weren't you?

19            A     Yes, I was.

20            Q     Are you aware that Ms. Nichols has  
21    testified that the Company's proposal is  
22    substantially similar to the advisory board structure

1 approved by the Commission in the Peoples Gas order?

2 A Yes.

3 Q Are you aware that the Attorney General's

4 Office is a member of the Peoples Advisory Board?

5 A Yes, I am.

6 Q And are you aware that CUB and the

7 Environmental Law and Policy Center have

8 representatives on the Advisory Board?

9 A Yes, I am.

10 Q And do you believe that those members, the

11 Advisory Board are diligent in protecting consumer

12 interests?

13 A I would assume that they are.

14 Q And in the Peoples North Shore Gas Program

15 Gene Beyer from Staff participates in the operating

16 committee meetings, doesn't he?

17 A Yes, he does.

18 Q What is Mr. Beyer's position at the

19 Commission?

20 A He is the head of the Public Utilities

21 Bureau.

22 Q And would you agree that if Mr. Beyer's

1 staff has a concern about the Peoples program, that  
2 it can take that concern directly to the Commission?

3 A Yes.

4 Q At Page 15, Line 295 of your testimony, you  
5 state: "Ratepayer money would be spent on projects  
6 by a group over whom the Commission has no  
7 authority;" is that correct?

8 A Yes.

9 Q And at Page 16, Line 306, along those lines  
10 you state: "There would be no accountability in the  
11 program," correct? I'm sorry it's Line 305.

12 A I state that they agree with the Company's  
13 position. Let me go back.

14 Q I'm looking at Page 16, Line 305 where it  
15 says: "There would be no accountability in the  
16 program."

17 A Right. What the full sentence says that  
18 begins on Line 302 of Page 15, it says:

19 "That the Commission agrees  
20 with the Company's position, that it  
21 is not to be held responsible for  
22 any imprudent expenditure with any

1           the energy efficiency program, that  
2           there would be effectively no  
3           method for the ratepayers to  
4           be protected from imprudent  
5           expenditure, and there would be  
6           no accountability in the program."

7           Q     But, as we discussed, the Advisory Board  
8     and Staff are watching over the program, correct?

9           A     Correct.

10          Q     And isn't it fair to say that the  
11     Commission has authority to watch the program at all  
12     times?

13          A     The Commission itself or the --

14          Q     Right. The Commission itself.

15          A     I don't know how feasible it would be for  
16     the Commission to --

17          Q     Fair enough.

18                     But if Staff or anybody brings any  
19     problems to its attention, the Commission could  
20     request an update on the program?

21          A     I believe that's fair.

22          Q     And the Commission could hold hearings on

1 the program?

2 A Yes.

3 Q And the Commission could potentially amend

4 the program?

5 A I believe, that's correct.

6 Q Or in an extreme instance, it could even

7 cancel the program?

8 A Yes.

9 Q Okay. At Page 16, Line 304, in this

10 sentence that we are discussing, you express concern

11 that there would effectively be no method for the

12 ratepayers to be protected from imprudent

13 expenditure, correct?

14 A Again, this is under the assumption that

15 the Commission agrees with the Company's position.

16 Q Right.

17 If Nicor were to make an expenditure

18 that the Commission deemed imprudent, any expenditure

19 right now, when would the expenditure be reviewed by

20 the Commission?

21 A My understanding is that in the normal

22 course of business, that the Company makes the

1 expenditures, and then when there's a rate case that  
2 comes up that they have to justify that expense for  
3 recovery purposes.

4 Q So if Nicor was controlling this program --

5 A I'm sorry.

6 Q I'm sorry. I thought you were finished.

7 A The difference here is that the money in  
8 this case is being brought through riders, so that  
9 it's getting the money upfront; it's not a case that  
10 they're spending the money and then getting the --  
11 justifying the expense at a later date.

12 Q But, typically, if the company makes an  
13 expenditure, the expenditure may not get reviewed for  
14 many years; is that correct?

15 A I believe, that's correct.

16 Q Could you turn to Page 15, Line 296,  
17 please.

18 Actually, start at line 295. You say  
19 that ratepayer money would be spent on projects by a  
20 group over whom the Commission has no authority, and  
21 then however, at the same time, the Board would be  
22 completely dependent on the Company to collect funds

1 and to continue funding the programs beyond the  
2 four-year pilot period, correct?

3 A Yes.

4 Q At the end of the four-year period, if  
5 Nicor wants to discontinue the program, then any of  
6 the parties in this proceeding, including Staff,  
7 would be free to make a filing with the Commission  
8 requesting that the programs continue, wouldn't they?

9 A I'm going to refer to my rebuttal  
10 testimony. Give me one second.

11 Page 17 of my rebuttal testimony,  
12 lines -- beginning on Line 343, I have a paraphrase,  
13 but it's a little bit of quote from the Commission's  
14 ruling and Nicor's 2004 rate case where it states:

15 "That the Commission's final  
16 order in the Company's 2004 rate case  
17 interpreted Section 9-201 of the  
18 Public Utilities Act to mean that  
19 intervenors do not have standing to  
20 make a proposal that expands the  
21 Utility's burden of proof."

22 And that's in reference to a previous



1 page in their order about establishing the justness  
2 and reasonableness of proposed rates and other  
3 charges.

4 My interpretation of the way that  
5 reads is that the Commission has ruled that it would  
6 have to be the Company that makes a petition to  
7 continue this program because it's their  
8 responsibility to establish the adjustments and  
9 reasonableness of its rates and other charges.

10 Q But when the Commission issued that ruling,  
11 at that time, it had not approved an existing program  
12 or those expenditures were already being made; is  
13 that correct?

14 A It had not; however, I believe it was the  
15 ELPC in that case that had made a petition at that  
16 time to include an energy-efficiency program, and  
17 that it ruled that intervenors don't have the  
18 authority to expand the Company's burden of proof.

19 Q Right.

20 But my question was: That was in the  
21 context of a proceeding where the Company did not  
22 have an existing program, correct?

1           A     That's correct.

2           Q     Now, to the extent that the Company  
3 requests approval of an operating expense in a rate  
4 case using a future test year, the Company is  
5 essentially getting the funds upfront for that  
6 expense from customer rates; is that correct?

7           A     I'm not sure I understand the question.

8           Q     Let me repeat it, and if it doesn't make  
9 sense, I'll try to break it down for you.

10                     To the extent that the Company  
11 requests approval for an operating expense in a rate  
12 case, using a future test year, the Company's getting  
13 the funds upfront for that expense, correct?

14           A     It's getting the funds for those -- I'm not  
15 sure the methodology of the test year forecast.

16                     My understanding is that it's  
17 basically projecting what those costs are going to  
18 be, and that it has to validate its projections as  
19 part of the whole contested proceeding.

20           Q     Right.

21                     Let's just take an expense like  
22 salaries. So there is a test year projection for

1     what salaries are going to cost, and then the Company  
2     recovers that amount -- they receive that amount to  
3     cover salaries in the rates, correct?

4             A     That's correct.

5             Q     Thus, they're essentially receiving that  
6     expense from customers before the Commission does any  
7     type of prudence review down the road, correct?

8             A     I believe that it looks at the  
9     reasonableness of the forecast of those costs.

10            Q     Right.

11                         But that's not my question. My  
12     question is: There is no prudence review until years  
13     down the road when they do another rate case?

14            A     I believe, that's correct.

15            MR. KELTER: Thank you. That's all the  
16     questions I have.

17                         CROSS-EXAMINATION

18                         BY

19                         MR. CASEY:

20            Q     Good afternoon, Mr. Brightwell.

21            A     Good afternoon.

22            Q     Phillip Casey on behalf of Nicor Gas

1 Company.

2 How would you like to talk about  
3 something other than EEP?

4 A Thank you, I think.

5 Q Don't worry, it's coming.

6 (Laughter.)

7 In your direct testimony, you also  
8 discuss the Company's proposed Rider CUA; is that  
9 correct?

10 A Yes, I do.

11 Q Can you tell us what CUA stands for?

12 A It stands for Company Use Gas Adjustment  
13 Costs.

14 Q And is it your understanding that the  
15 Company's Rider CUA seeks to address the impact of  
16 gas price volatility associated with company-use gas  
17 expense?

18 A I believe that's an accurate description.

19 Q Would you agree that natural gas price can  
20 change the company-use gas cost?

21 A Yes, I would.

22 Q And at Lines 466 through 67 of your direct

1 testimony, you stated that the price of natural gas  
2 is outside of the control of the company; is that  
3 correct?

4 A Lines 466 and 467?

5 Q Yes, sir.

6 A I state it's largely out of the control of  
7 the Company.

8 Q Could you please define the word,  
9 "largely."

10 A Well, I guess natural gas price itself is  
11 outside of the control. The total expenditure is  
12 partly within control of the Company in the sense it  
13 can alter its usage.

14 Q So gas price is outside of the control, but  
15 the volumes, is that what you're referring to, that  
16 the Company has some control over?

17 A Yes.

18 Q Have you had an opportunity to review AG  
19 Witness Rubin's direct testimony?

20 A Yes, sir.

21 Q All right. And do you agree with his  
22 conclusion that the company-use volume since 2005

1     have been relatively level?

2           A     I'm not sure.

3           Q     Would you accept, subject to check, that

4     that was his conclusion contained at Lines 320 and 21

5     and his Table 2.02?

6           A     Those were Lines 320 through 321?

7           Q     Correct.

8           A     Of Mr. Rubin's direct testimony?

9           Q     Correct.

10          A     And what was the table?

11          Q     2.02.

12          A     And the conclusion was?

13          Q     Company-use volumes were relatively level?

14          A     Subject to check, I would accept that.

15          Q     Perhaps, I missed this.

16                     Do you have an opinion as to whether

17     or not company-use volumes are relatively level?

18          A     No, I don't.

19          Q     Despite not having an opinion as to that,

20     you propose a mechanism, a change to the Rider CUA

21     mechanism, to address volumes or to incent the

22     Company to control volumes; is that correct?

1           A     Yes, I did.

2           Q     And is it your understanding that the  
3     Company agreed to your proposed change?

4           A     Yes, I believe that was in Mr. Mudra's  
5     rebuttal testimony.

6           Q     Now, in your rebuttal testimony, you made a  
7     subsequent modification -- a proposed modification to  
8     the mechanism, did you not?

9           A     Can you be more specific?

10          Q     Okay. Well, after reviewing Mr. Rubin's  
11     direct testimony regarding Account 823, in your  
12     rebuttal testimony did you propose a new modification  
13     to Rider CUA?

14          A     Yes, I did.

15          Q     And that new modification requires that any  
16     costs associated with Account 823 be excluded from  
17     recovery under the rider; is that correct?

18          A     That's correct.

19          Q     Have you performed any studies, tests, or  
20     made any projections as to the impact of your effect  
21     on the Company's proposal?

22          A     No, I haven't. That proposal was based on

1 my understanding that the Commission removed that  
2 from the rider previously because it belonged in  
3 Account 823.

4 Q When did you become aware of the  
5 Commission's decision?

6 A After reviewing Mr. Rubin's testimony, I  
7 went back and looked at the 2004 rate case.

8 Q Account 823 gas loss, that provision  
9 doesn't prevent or exclude recovery, does it?

10 A Does it prevent or exclude rider recovery?

11 Q Not rider recovery, just recovery in  
12 general?

13 A No, it doesn't.

14 Q In fact, it permits recovery, but over  
15 time?

16 A Yes.

17 Q Now, recovery under Account 823 requires a  
18 separate request of the Commission; is that correct?

19 A It requires a request of the Commission to  
20 amortize the cost.

21 Q Now, are you familiar with other Staff  
22 proposals with respect to Rider CUA?



1           A     I know that -- I believe it was Diana  
2     Hathhorn made some adjustments to reconciliation and  
3     audits periods.

4           Q     So the reconciliation and internal audit  
5     provisions recommended by Ms. Hathhorn, do you know  
6     whether or not the Company's accepted those  
7     recommendations?

8           A     I don't know.

9           Q     You do not know?

10          A     No.

11          Q     Would you accept, subject to check, that  
12     they had?

13          A     Yes, I would.

14          Q     So we are already going to have a  
15     reconciliation proceeding for Rider CUA.

16                     Again, assuming the Company's accepted  
17     that; is that correct?

18          A     Assuming that the Company's accepted that  
19     and that the Commission has approved the rider  
20     itself.

21          Q     Okay. But your recommendation is that the  
22     Company needs to file an additional proceeding in

1       addition to its annual reconciliations?

2           A       My recommendation is that the portion of

3       the cost in 823 would not be part of the rider

4       itself.

5           Q       And in order for the Company to get

6       recovery for that, the company would need to file

7       another proceeding; is that correct?

8           A       Only if --

9           Q       Only if they want recovery?

10          A       Only if there was a significant charge that

11       they felt needed recovery.

12          Q       Directing your attention to Lines 30

13       through 32 of your direct testimony.

14                   Are you there?

15          A       Yes.

16          Q       There you summarize your testimony as it

17       relates to Rider CUA; is that correct?

18          A       Yes.

19          Q       Your summary of Rider CUA is that it

20       transfers risks of company-use gas costs; is that

21       correct?

22          A       Correct.

1           Q     As things stand now, is it fair to say that  
2     the company currently must bear all the risks  
3     associated with volatile natural gas prices?

4           A     I don't believe that's a fair assumption.

5           Q     Okay. Tell me what's unfair about it.

6           A     Within it's operating cost budget as part  
7     of the rate case that determines what the revenue  
8     collections should be that a portion of those costs  
9     go to the customers as it is.

10                     To the extent that there is deviations  
11     from the price, the Company would bear the risks of  
12     those deviations from the price.

13           Q     Would you agree Rider CUA can transfer  
14     benefits to ratepayers?

15           A     Yes, I think that would be accurate.

16           Q     And why do you think that's accurate?

17           A     In the years that the price was lower than  
18     was forecast, customers could receive a refund for  
19     those lower prices.

20           Q     And without or absent Rider CUA under that  
21     particular scenario, would customers be entitled to a  
22     refund?

1           A     No, they wouldn't.

2           Q     Would you agree that ratepayers have the  
3     ability to receive refunds when actual costs fall  
4     below approved test year levels, that such a result  
5     is desirable?

6           A     That portion of the result is desirable,  
7     yes.

8           Q     Since filing your rebuttal testimony, have  
9     you had an opportunity to review the rebuttal  
10    testimony of ELPC Cooper and the surrebuttal  
11    testimony of O'Connor and Ms. Nichols?

12          A     Yes, I have.

13          Q     In your direct testimony at Lines 352 to  
14    353, you summarize your recommendation to the  
15    Commission with respect to the Company's proposed  
16    Rider EEP?

17          A     Okay.

18          Q     In your direct testimony, your primary  
19    recommendation is that the Commission reject Rider  
20    EEP; is that correct?

21          A     That is correct.

22          Q     Having reviewed the rebuttal testimony of

1 ELPC and the surrebuttal testimony of O'Connor and  
2 Nichols on the subject of EEP, have you changed your  
3 primary recommendation?

4 A No, I haven't.

5 Q In fact, to support your primary  
6 recommendation, you question the effectiveness of  
7 energy-efficiency programs in other Midwestern  
8 states; is that true?

9 A Yes, it is.

10 Q I direct your attention to Lines 226 and  
11 227 of your direct testimony. There you'll find  
12 Figure 2.

13 A Okay.

14 Q Were you in the room when Company Witness  
15 Nichols was being cross-examined on Monday morning?

16 A Yes, I was.

17 Q And there were several questions relating  
18 to this particular figure; is that correct?

19 A Yes, there were.

20 Q The column identified as "Illinois" within  
21 Figure 2, is that a statewide consumption average for  
22 residential customers?

1           A     Yes, it is.

2           Q     And just so we're clear, though, this  
3     figure does not contain or does not represent average  
4     consumption of residential customers in the Nicor Gas  
5     service territory?

6           A     It would be a subset that's within here.  
7     It's not specifically to the Nicor.

8           Q     By looking at Figure 2, can you tell me  
9     what portion in 1990 the average consumption of  
10    134.515 relates to Nicor Gas?

11          A     No, I can't.

12          Q     Is it fair to say that you believe high gas  
13    prices are effective in encouraging conservation?

14          A     Yes, that's fair.

15          Q     Is it your opinion that high gas prices  
16    alone are sufficiently effective?

17          A     I believe that there can be additional  
18    savings reached with energy-efficiency plans.

19                   I am not sure that the cost of the  
20    plans doesn't make it prohibitively costly for the  
21    benefits that are received.

22          Q     Is it fair to say that the Illinois

1 Commerce Commission believes that the costs related  
2 to energy-efficiency plans are worth it?

3 A I'm not sure what the commissioners beliefs  
4 are.

5 Q Okay. Do you believe that there are  
6 benefits to society at large with energy efficiency?

7 A I believe there can be benefits.

8 Again, it's a question of whether the  
9 costs associated with getting those benefits make it  
10 worthwhile.

11 Q Have you performed any study, analysis, or  
12 projection as to the -- strike that.

13 Mr. Brightwell, you indicated you  
14 started in June 2008 at the Commission?

15 A That's correct.

16 Q Are you aware that within the past 10  
17 months the Commission has approved energy-efficiency  
18 plans for Peoples Gas, North Shore Gas, Ameren CILCO,  
19 Ameren CIPs and Ameren IP?

20 A Yes, I am aware of that.

21 MR. CASEY: Nothing further.

22 JUDGE SAINSOT: Mr. Robertson, I heard

1       somewhere that you have a plane to catch?

2               MR. ROBERTSON:   I do, your Honor.   I was going  
3       to move the admission of my testimony, but I can wait  
4       for a bit.

5               JUDGE SAINSOT:   Okay. I just don't want to hold  
6       you up unnecessarily.

7               MR. ROBERTSON:   I appreciate that.

8               MR. KELTER:    I was going to move for the  
9       admission of those cross exhibits.

10              JUDGE SAINSOT:   Right, but you're going to do  
11      that after you get a complete set, right?

12              MR. KELTER:    Right.

13              JUDGE SAINSOT:   Let's start with any redirect.

14              MS. VON QUALEN:   If we could have a short  
15      break.

16              JUDGE SAINSOT:   Okay. So 5 minutes?

17              MS. VON QUALEN:   Yes.

18                                (Whereupon, a recess was taken.)

19              JUDGE SAINSOT:   You may approach.

20              MR. ROBERTSON:   Thank you, your Honor.

21                                At this time I would like to move the  
22      admission of the direct testimony of Dr. Alan



1 Rosenberg IIEC, Exhibit 1.0 with Exhibits 1.1 through  
2 and including 1.6, the rebuttal testimony of Dr. Alan  
3 Rosenberg IIEC Exhibit 2.0, with attached Exhibits  
4 2.1, 2.2, 2.3, 2.4 corrected, 2.5 corrected, and 2.6  
5 corrected.

6 And a variation or affidavit were  
7 submitted with both the direct and rebuttal  
8 testimony.

9 JUDGE SAINSOT: Any objection to the admission  
10 of Dr. Rosenberg's testimony into evidence?

11 (No response.)

12 Okay. That being the case, the motion  
13 is granted. And IIEC Exhibit 1.0 with attachment 1.1  
14 through 1.6, as well as 2.0 and Attachments 2.1  
15 through 2.6.

16 And I will note for the record that  
17 2.4 through 2.6 are corrected.

18 Those documents are all admitted into  
19 evidence.

20

21

22

1  
2 (Whereupon, IIEC Exhibit Nos.  
3 1.0 with Attachments 1.1  
4 through 1.6, 2.0 and  
5 Attachments 2.1 through 2.6,  
6 2.4 through 2.6 Corrected were  
7 admitted into evidence.)  
8 MR. ROBERTSON: Thank you, your Honor. I  
9 appreciate the courtesy.  
10 JUDGE SAINSOT: Okay. Have a safe trip home.  
11 MR. ROBERTSON: Thank you.  
12 MR. ROONEY: Excuse me, your Honor. We're  
13 waiting for Judge Kimbrel to get back?  
14 JUDGE SAINSOT: Right. Mr. Kelter has a paper  
15 jam situation. That's why Judge Kimbrel left.  
16 We're ready to go back.  
17 (Whereupon, a recess was taken.)  
18 JUDGE SAINSOT: Mr. Kelter, do you have a  
19 motion?  
20 MR. KELTER: Yes, your Honor. I would like to  
21 get two cross exhibits admitted into the record.  
22 The first being the Energy Information

1 Short-Term Energy Outlook from November of 2008  
2 marked as ELPC Cross-Exhibit 1.0.

3 And the second being The Economic  
4 Analysis of Consumer Response to Natural Gas Prices  
5 by the American Gas Association referred to in  
6 Witness Brightwell's testimony, which I marked as  
7 ELPC Cross-Exhibit 2.0.

8 JUDGE SAINSOT: Okay. So you're going to bring  
9 the -- did you bring the freshly made copies of 2.0?

10 MR. KELTER: Yes.

11 JUDGE SAINSOT: Any objection to admission of  
12 those two documents into evidence?

13 (No response.)

14 Hearing none, they are admitted into  
15 evidence.

16 They are, for the record, ELPC  
17 Cross-Exhibit 1.0 and ELPC Cross-Exhibit 2.0.

18 (Whereupon, ELPC Cross Exhibit  
19 Nos. 1.0 and 2.0 were admitted  
20 into evidence.)

21 JUDGE SAINSOT: Okay. Redirect?

22 MS. VON QUALEN: Staff has no redirect for

1 Mr. Brightwell.

2 JUDGE SAINSOT: I have just one question for  
3 you, Dr. Brightwell. Sorry about that.

4 THE WITNESS: That's quite all right.

5 CROSS-EXAMINATION

6 BY

7 JUDGE SAINSOT:

8 Q And I'm just trying to clarify your  
9 position about the advisory board, the PGL Advisory  
10 Board versus the ComEd Advisory Board.

11 It's my understanding that you don't  
12 have a problem with the people on the PGL Advisory  
13 Board.

14 And, correct me if I'm wrong, it was  
15 my understanding that it has to do with money really,  
16 how ratepayers would recoup any losses in the ComEd  
17 situation versus the Peoples situation?

18 A To a large extent, that's correct.

19 In order to say I don't have a problem  
20 with the specific people, I can't say that because  
21 it's just put out there as a stakeholders advisory  
22 board at this point, but there hasn't been any

1 presentation who the specific stakeholders of the  
2 Nicor Gas Advisory Board would be at this time.

3 The general concern, though, is that  
4 the Company feels that it shouldn't be held liable  
5 for the decisions that the advisory board makes, that  
6 they shouldn't be financially responsible for any  
7 imprudent expenditures that may occur.

8 And I believe that that's a  
9 reasonable, that it's a reasonable position on their  
10 part that in order to remedy that where there is  
11 financial accountability, I think that it would be  
12 preferable to have the Company in charge and having  
13 something similar to what was done with the ComEd and  
14 Ameren Energy Efficiency Programs.

15 JUDGE SAINSOT: Okay. Thanks.

16 (Witness excused.)

17 MR. CASEY: Your Honor, I believe the next  
18 witness is --

19 JUDGE SAINSOT: Mr. Sackett.

20 MR. CASEY: No, I don't believe that we have  
21 cross for Mr. Sackett.

22 JUDGE SAINSOT: No cross? Nobody is crossing

1     Mr. Sackett?

2             MR. HANZLIK:   Blair Hanzlik on behalf of  
3     Constellation New Energy Gas.

4             We don't have cross for Mr. Sackett.  
5     We actually have a matter of efficiency.  We entered  
6     into a stipulation with Mr. Sackett and Staff.

7             JUDGE SAINSOT:  Well, Mr. Sackett, it looks  
8     like you can sit down then or leave.

9                             (Laughter.)

10            MR. CASEY:  Your Honor, while the parties are  
11    moving forward with their stipulation, we ask for a  
12    little time.

13            The Company's speaking with the next  
14    witness in an attempt to -- we're speaking with the  
15    next witness.  It may shorten substantially the  
16    cross-examination time.

17            So if you want to take care of other  
18    housekeeping measures while I tend to that, it might  
19    be a good use of time.

20            JUDGE SAINSOT:  Sure.  Okay.

21            You have a written stipulation it  
22    looks like?

1           MR. HANZLIK:  Yes, your Honor, we have a  
2   written stipulation that has been signed by both  
3   Mr. Sackett and counsel for both of the parties.  We  
4   would like to take this opportunity to present it  
5   into evidence as CNE Cross-Exhibit 1.

6                       May I approach?

7           JUDGE SAINSOT:  Sure.

8           MR. HANZLIK:  We have shown the stipulation to  
9   other parties that we believe would have interest in  
10  the topics and have not received any objections to  
11  the stipulation.

12          JUDGE SAINSOT:  Thank you.

13                       Now, you had something.

14          MR. ROONEY:  Yes, your Honor.

15          MR. HANZLIK:  I don't mean to interrupt, I want  
16  to make sure that that is offered.

17          JUDGE BEN:  You're entering this as a cross  
18  exhibit?

19          MR. HANZLIK:  Yes, if we can.

20          JUDGE BEN:  You're not reading it into the  
21  record.

22          MR. HANZLIK:  Yes.

1 JUDGE SAINSOT: But it's a stipulation?

2 MR. HANZLIK: Yes, your Honor.

3 JUDGE SAINSOT: Okay. Fine. That works for me.

4 So you're asking for admission of CNE

5 Gas Cross-Exhibit No. 1 into evidence?

6 MR. HANZLIK: Correct.

7 JUDGE SAINSOT: Any objection?

8 (No response.)

9 Hearing none, it's entered into

10 evidence.

11 MR. HANZLIK: Thank you.

12 (Whereupon, CNE Cross Exhibit

13 No. 1 was admitted into

14 evidence.)

15 MR. ROONEY: Your Honor, as mentioned

16 previously, the one witness that Nicor Gas needs to

17 submit testimony for is Kevin W. Kirby.

18 Mr. Kirby submitted direct testimony,

19 identified as Nicor Gas Exhibit 6.0 Corrected, along

20 with attached Exhibit 6.1.

21 Rebuttal testimony, identified as

22 Nicor Gas Exhibit 21.0, along with attached exhibits



1     21.1 through 21.6.

2                     And, finally, surrebuttal testimony,  
3     identified as Exhibit Nicor Gas 40.0, along with  
4     attached Exhibit 40.1.

5                     And would move that these exhibits be  
6     admitted into evidence, your Honor.

7             JUDGE SAINSOT:   Any objection?

8                                 (No response.)

9                     Hearing none, your motion is granted.  
10    And Mr. Kirby's testimony, which for the record, is  
11    Nicor Exhibit 6.0 with the Attachment 6.1, Nicor  
12    Exhibit 21.0 with Attachments 21.1 through 21.6, and  
13    Nicor Exhibit 40.0 with Attachment 40.1.

14                     Those are all admitted into evidence.

15                                 (Whereupon, Nicor Exhibit Nos.  
16                                 6.0, Attachment 6.1, Nicor  
17                                 Exhibit 21.0, Attachments 21.1  
18                                 through 21.6, Nicor Exhibit  
19                                 40.0, Attachment 40.1 were  
20                                 admitted into evidence.)

21             MR. ROONEY:   And that's all the Company has.

22             JUDGE SAINSOT:   So we'll just wait for

1 Mr. Casey.

2 MS. LIN: We can move in our exhibits, as well.

3 JUDGE SAINSOT: Okay.

4 MS. LIN: For the Staff witnesses whose crosses  
5 were waived, in particular, Staff Cross Exhibit 1.0,  
6 direct testimony of Dan Kahle with attached Schedules  
7 1.01 through 1.07 with Attachments A through F.

8 In addition to Staff Exhibit 14.0,  
9 rebuttal testimony of Dan Kahle with attached  
10 Schedules 14.01 through 14.07 and Attachment A.

11 Do you want me to go through all of  
12 them at one time?

13 JUDGE SAINSOT: No, let's do it witness by  
14 witness. It would be confusing if somebody were to  
15 object.

16 MS. LIN: We would be moving into evidence  
17 Mr. Kahle's two exhibits with attached schedules and  
18 attached exhibits.

19 JUDGE SAINSOT: Any objection -- before I start  
20 that, Judge Ben has copies?

21 MS. LIN: Yes, she has, Judge.

22 JUDGE SAINSOT: Thanks.

1                   Any objection to admission of  
2   Mr. Kahle's testimony into evidence?  
3                               (No response.)  
4                   Hearing none, your motion is granted.  
5                   And Staff Exhibit 1.0 with schedules  
6   attached, identified as Exhibits 1.01 through 1.07  
7   and Attachments A through F, as well as Staff Exhibit  
8   14.0 and schedules attached to 14.0 numbered 14.01  
9   through 14.07 and Attachment A, all of those are  
10   entered into evidence.  
11           MS. LIN:   Thank you.  
12                               (Whereupon, Staff Exhibit  
13                               Nos. 1.0, schedules attached,  
14                               identified as Exhibits 1.01  
15                               through 1.07 and Attachments A  
16                               through F, Staff 14.0 and  
17                               schedules attached to 14.0  
18                               numbered 14.01 through 14.07  
19                               and Attachment A were admitted  
20                               into evidence.)  
21           MS. LIN: Staff now moves into evidence, the  
22   Staff Exhibit 3.0, direct testimony of Burma Jones

1 with attached schedules 3.01 through 3.05 and Staff  
2 Exhibit 16.0, rebuttal testimony of Burma Jones with  
3 attached Schedules 16.01 through 16.02 and  
4 Attachment A.

5 JUDGE SAINSOT: Any objection to admission of  
6 Ms. Jones' testimony into the record?

7 (No response.)

8 Hearing none, your motion is granted,  
9 and Staff Exhibit 3.0 with the schedules attached,  
10 identified as 3.01 through 3.05, as well as Staff  
11 Exhibit 16.0 with schedules attached, identified as  
12 16.01 and 16.02, as well as Attachment A are admitted  
13 into evidence.

14 (Whereupon, Staff Exhibit Nos.  
15 3.0, schedules 3.01 through  
16 3.05, Staff Exhibit 16.0,  
17 schedules attached 16.01 and  
18 16.02, Attachment A were  
19 admitted into evidence.)

20 MS. LIN: Thank you.

21 This morning Staff also filed a motion  
22 for leave to file Staff Exhibit 4.0R, which is the

1 revised direct testimony of Mike Ostrander with  
2 schedules attached 4.01 through 4.04.

3 We are asking leave to file that  
4 testimony and for that testimony also to be moved  
5 into evidence.

6 JUDGE SAINSOT: Any objection to Staff's motion  
7 for leave to file the corrected testimony of  
8 Mr. Ostrander?

9 (No response.)

10 Hearing none, your motion is granted.

11 (Whereupon, Staff Exhibit  
12 No. 4.0R with schedules 4.01  
13 through 4.04 were admitted into  
14 evidence.)

15 MS. LIN: Thank you.

16 We are also are moving into evidence  
17 Staff Exhibit 17.0, rebuttal testimony of Mike  
18 Ostrander with attached schedule 17.01 through 17.02.

19 JUDGE SAINSOT: Any objection to admission of  
20 Mr. Ostrander's testimony into evidence?

21 (No response.)

22 Hearing none, your motion is granted.

1 And Staff Exhibit 4.0R with schedules attached that  
2 are identified as 4.01 through 4.04, and also Staff  
3 Exhibit 17.0, with schedules attached, identified as  
4 17.01 through 17.02, they're all admitted into  
5 evidence.

6 (Whereupon, Staff Exhibit Nos.  
7 Staff Exhibit 4.0R with  
8 schedules attached, identified  
9 as 4.01 through 4.04, Staff  
10 Exhibit 17.0, with schedules  
11 attached, identified as 17.01  
12 through 17.02 were admitted  
13 into evidence.)

14 (Whereupon, there was a change  
15 of reporter.)

16  
17  
18  
19  
20  
21  
22

1           MS. LIN: At this time, we would also seek to  
2 move into evidence Staff Exhibit 5.0, Direct  
3 Testimony of Janis Freetly with attached schedules  
4 5.1 through 5.7, in addition to Staff Exhibit 18.0C  
5 Corrected Rebuttal Testimony of Janis Freetly with  
6 attached schedules 18.1 through 18.2.

7           JUDGE SAINSOT: Any objection to the admission  
8 of Ms. Freetly's testimony into evidence?

9                       Hearing none, your motion is granted.  
10 And Staff 5.0 with the attached schedules that are  
11 identified as 5.0 -- 5.1 through 5.7, as well as  
12 Staff Exhibit 18.0C and the attached schedules  
13 identified as 18.1 through 18.2, they are all  
14 admitted into evidence.

15           MS. LIN: Thank you, Judge.

16                               (Whereupon, Staff  
17                               Exhibit Nos. 5.0 and 18.0C were  
18                               admitted into evidence  
19                               as of this date.)

20           MS. LIN: We're also moving for admission into  
21 evidence Staff Exhibit 8.0, Direct Testimony of  
22 Christopher Boggs, in addition to Staff Exhibit 21.0,

1 Rebuttal Testimony of Christopher Boggs with attached  
2 Exhibit 21.01.

3 JUDGE SAINSOT: Any objection to the admission  
4 of Mr. Boggs' testimony into evidence?

5 That being the case, your motion is  
6 granted. And Staff Exhibit 8.0, as well as Staff  
7 Exhibit 21.0 and Staff Exhibit 21.1, which is  
8 attached to 21.0, they are all admitted into  
9 evidence.

10 (Whereupon, Staff  
11 Exhibit Nos. 8.0, 21.1 and 21.0  
12 were  
13 admitted into evidence  
14 as of this date.)

15 MS. LIN: Thank you.

16 At this time, we're seeking for  
17 admission into evidence Staff Exhibit 9.0, Direct  
18 Testimony of Dennis Anderson, in addition to Staff  
19 Exhibit 22.0, Rebuttal Testimony of Dennis Anderson.  
20 There is a public version and a confidential version.

21 JUDGE SAINSOT: Of the 22.0?

22 MS. LIN: Of Staff Exhibit 22.0, that's



1 correct.

2 JUDGE SAINSOT: So you're asking for admission  
3 of both the public and the private?

4 MS. LIN: That's correct.

5 JUDGE SAINSOT: Yeah. Public and confidential.

6 Any objection to the admission of  
7 Dennis Anderson's testimony?

8 Hearing none, your motion is granted.  
9 And Staff Exhibit 9.0, as well as the two versions of  
10 Staff Exhibit 22.0, being -- one being public and one  
11 being confidential, all three documents are admitted  
12 into evidence.

13 (Whereupon, Staff  
14 Exhibit Nos. 9.0 and 22.0 were  
15 admitted into evidence  
16 as of this date.)

17 MS. LIN: Thank you, Judge.

18 We'd also be moving for admission into  
19 evidence Staff Exhibit 10.0, Direct Testimony of Mark  
20 Maple, in addition to Staff Exhibit 23.0, Rebuttal  
21 Testimony of Mark Maple.

22 JUDGE SAINSOT: Any objection to the admission

1 of Mr. Maple's testimony into evidence?

2                   Hearing none, your motion is granted.

3 And Staff -- first of all, Mr. Maple's testimony is

4 admitted into evidence. And Staff Exhibits 10.0 and

5 23.0 are admitted into evidence.

6                   (Whereupon, Staff

7                   Exhibit Nos. 10.0 and 23.0 were

8                   admitted into evidence

9                   as of this date.)

10           MS. LIN: Thank you, Judge.

11                   This morning Staff also filed a motion

12 for leave to file Staff Exhibit 24.0R2, which is the

13 Second Revised Rebuttal Testimony of David Sackett,

14 in addition to Staff Exhibit 24.0R2.

15           JUDGE SAINSOT: What was in addition to 24.0R2?

16           MS. LIN: We filed a motion for leave to file

17 that. And the actual Staff exhibit with Attachments

18 A through H. We filed that this morning on E-Docket.

19           JUDGE SAINSOT: Okay. You're asking for --

20           MS. LIN: Leave to file, yes.

21           JUDGE SAINSOT: -- leave to file Staff

22 Exhibit 24.02 --

1 MS. LIN: OR 2.

2 JUDGE SAINSOT: OR2 -- got it -- with

3 Attachments A through H. Any objection to that

4 motion?

5 Hearing none, your motion is granted.

6 MS. LIN: Thank you.

7 We are now moving -- seeking -- we are

8 now moving for admission into evidence Staff

9 Exhibit 11.0R, which is the Revised Direct Testimony

10 of David Sackett, in addition to Staff Exhibit

11 24.0R2, which is the Second Revised Rebuttal

12 Testimony of David Sackett with Attachments A through

13 H.

14 JUDGE SAINSOT: Any objection to Staff's motion

15 to admit the testimony of Mr. Sackett?

16 Hearing none, your motion is granted.

17 Staff Exhibit 11.0R, as well as Staff Exhibit 24.0R2

18 with Attachments A through H are admitted into

19 evidence.

20

21

22

1 (Whereupon, Staff  
2 Exhibit Nos. 11.0R and 24.0R2  
3 were  
4 admitted into evidence  
5 as of this date.)

6 MS. LIN: And last, but not least, Staff is  
7 moving for admission into evidence Staff  
8 Exhibit 12.0, Direct Testimony of Bill Voss with  
9 Attachment A.

10 JUDGE SAINSOT: Any objection to the admission  
11 of Mr. Voss' testimony?

12 MR. ROONEY: I think the number -- what was the  
13 number?

14 MS. LIN: 12.0.

15 MR. ROONEY: Isn't that Brightwell?

16 MS. LIN: No. Brightwell was 13.0.

17 MR. ROONEY: Oh. A twist. Okay. Thanks.

18 JUDGE SAINSOT: Any objection?

19 That being the case, your motion is  
20 granted. And Staff Exhibit 12.0 with Attachment A is  
21 entered into evidence.  
22

1                               (Whereupon, Staff  
2                               Exhibit No. 12.0 was  
3                               admitted into evidence  
4                               as of this date.)

5               MS. LIN:  And not last, but not least -- there  
6   is one other last but not least -- we are moving for  
7   admission into evidence Staff Group Cross Exhibit 1,  
8   which is a group exhibit of stipulated data request  
9   responses between Staff and the Company, which I'm  
10  now tendering to Judge Benn for the record.  I saved  
11  the printing for --

12             JUDGE BENN:  Is this all one set?

13             MS. LIN:  It is all one set.  I can --

14             JUDGE BENN:  We'll have copies made.  Don't  
15  worry about it.

16             JUDGE SAINSOT:  We'll get copies.

17             MS. LIN:  Perhaps, I could just read the  
18  stipulated DR response into the record.

19             JUDGE SAINSOT:  Better you than me.

20             MS. LIN:  Staff and the Company have agreed to  
21  stipulate to the following data request responses:

22                       JMO 4.01, JMO 12.01, SK 6.05, SK 7.02,

1 JF 2.01, JF 3.06 Exhibit 1, JF 4.04, JF 12.04, JF  
2 13.03, DLH 13.02, DLH 33.01, DLH 33.02, MEM 9.01, CB  
3 4.02 supplemental responses, CB 4.03 supplemental  
4 responses, CB 4.04 supplemental responses, CB 4.08  
5 supplemental responses, AG, parentheses, DJE 8.07,  
6 DAS 2.06, DAS 4.03, DAS 7.16, DAS 7.19, CNE 2.12, CNE  
7 3.01, DAS 7.18, NRC Staff 2.01, and NRC Staff 3.01.

8 We're asking that all of these data  
9 responses be entered into evidence.

10 JUDGE SAINSOT: And we're calling that a group  
11 exhibit, I hope?

12 MS. LIN: Yes. Staff Group Cross Exhibit 1.

13 JUDGE SAINSOT: Okay. So, Judge Benn, we just  
14 need the -- Cross Exhibit 1 is fine.

15 JUDGE BENN: It's going to be Staff Cross  
16 Exhibit 3 for us.

17 JUDGE SAINSOT: Staff Cross Exhibit 3 we're  
18 calling it because you had two others.

19 (Whereupon, Staff Cross  
20 Exhibit No. 3 was  
21 admitted into evidence  
22 as of this date.)

1 MS. LIN: That's fine. Thank you, Judge.

2 JUDGE SAINSOT: Okay.

3 Mr. Rooney?

4 MR. ROONEY: I'll turn it over to Mr. Casey.

5 MR. CASEY: Thank you, Mr. Rooney.

6 Your Honors, we have Mr. Anderson up  
7 for cross from Vanguard.

8 MR. WIER: Good afternoon.

9 (Witness sworn.)

10 MR. WIER: Good afternoon, your Honor. For the  
11 record, my name is Jonathan Wier from Eimer Stahl  
12 representing Vanguard Energy Services, LLC.

13 NEIL ANDERSON,  
14 called as a witness herein, having been first duly  
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY

18 MR. WIER:

19 Q Mr. Anderson, could you please state your  
20 name for the record.

21 A Neil Anderson.

22 Q And by whom are you employed?

1           A     Vanguard Energy Services, LLC.

2           Q     And what is your position at Vanguard?

3           A     I am a managing partner.

4           Q     And what is Vanguard's business address?

5           A     It is 850 East Diehl Road, Suite 142,

6     Naperville, Illinois 60563.

7           Q     And, Mr. Anderson, have you submitted

8     written testimony in this proceeding?

9           A     I have.

10          Q     I've placed two documents before you.  You

11     brought them up with you to the stand.  The first has

12     been labeled VES Exhibit 1.0.  Could you identify

13     this document?

14          A     Yes.  This is my original testimony.

15          Q     And the second document is a document

16     that's been labeled VES Exhibit 2.0.  Could you

17     identify that document?

18          A     Yes.  This is my rebuttal testimony.

19          Q     Did you prepare both VES Exhibit 1.0 and

20     VES 2.0?

21          A     I did.

22          Q     And they are true and accurate to the best



1 of your knowledge and belief?

2 A They are.

3 Q And if you were asked each of these  
4 questions in your direct and rebuttal testimony  
5 today, would your answers be the same?

6 A They would.

7 MR. WIER: I would like to move to admit VES  
8 Exhibits 1.0 and 2.0 into evidence and tender  
9 Mr. Anderson for cross-examination.

10 JUDGE SAINSOT: Do you have -- I just have some  
11 really boring formality questions. Are there any  
12 attachments to 1.0 or 2.0?

13 MR. WIER: There are no attachments.

14 JUDGE SAINSOT: Okay. And you've tendered two  
15 copies to Judge Benn?

16 MR. WIER: I will do that now.

17 JUDGE SAINSOT: That's fine. Okay.

18 Any objection to the admission of VES  
19 Exhibits 1.0 and 2.0 which are the testimony of  
20 Mr. Anderson?

21 Hearing none, your motion is granted,  
22 Counsel, and VES Exhibits 1.0 and 2.0 are entered

1       into evidence.

2                               (Whereupon, VES

3                               Exhibit Nos. 1.0 and 2.0 were

4                               admitted into evidence

5                               as of this date.)

6       JUDGE SAINSOT:   Cross?

7       MR. CASEY:   Yes, your Honor.

8                       CROSS-EXAMINATION

9                       BY

10       MR. CASEY:

11       Q     Good afternoon, Mr. Anderson.

12       A     Good afternoon.

13       Q     Phil Casey on behalf of Nicor Gas.

14                       Mr. Anderson, based on discussions

15     between Nicor Gas and Vanguard Energy Services,

16     certain issues raised by Vanguard have been resolved;

17     is that correct?

18       A     That's correct.

19       Q     First, I'd like to direct your attention to

20     Lines 41 through 101 of your direct testimony.

21     Strike that.

22                       Let's see.   25.   Excuse me.   It might

1       help if I looked at the right document.

2               JUDGE SAINSOT:  It's been a long day.

3               MR. CASEY:  Yes, it has.

4       BY MR. CASEY:

5               Q       Lines 41 through 101 of your direct

6       testimony.  Are you there?

7               A       Yes.

8               Q       And in that -- in that section, you discuss

9       what you identified as imbalance traded gas; is that

10      correct?

11              A       That's correct.

12              Q       To address the concerns you raise regarding

13      the trading of gas, the Company and Vanguard Energy

14      Services has agreed to a modification of Rider 25; is

15      that correct?

16              A       That's correct.

17              MR. CASEY:  Your Honor, may I approach?

18              JUDGE SAINSOT:  Sure.

19      BY MR. CASEY:

20              Q       Mr. Anderson, what I've handed you has been

21      identified as Nicor Cross Exhibit No. 5.  It's

22      identified as Rider 25, Firm Transportation Service,

1 the fifth revised sheet No. 78. Do you have that in  
2 front of you?

3 A I do.

4 Q Have you seen this before?

5 A I have.

6 Q Are you familiar with its contents?

7 A I am.

8 Q And to resolve the issue that Vanguard had  
9 regarding the trade of storage balances, there is  
10 highlighted or underlined language contained within  
11 that document; is that correct?

12 A That's correct.

13 Q And is that -- and for purposes of this  
14 proceeding, this rate case, the language contained  
15 within Rider 25 adequately addresses the concern that  
16 you had raised in your direct testimony?

17 A It does.

18 Q Okay. For purposes of this rate case only,  
19 does Vanguard withdraw its imbalance trade gas  
20 proposal?

21 A We do.

22 Q Next I'd like to direct your attention to

1 Lines 137 through 153. Are you there?

2 A I am.

3 Q There you discuss the timing of the  
4 calculation for maximum daily contract quantities,  
5 also known as MDCQ.

6 Have Vanguard Energy Services and  
7 Nicor Gas reached an agreement on this issue and has  
8 Vanguard Energy Services agreed to withdraw its  
9 proposed change to the MDCQ calculation?

10 A We have. And we have.

11 Q Thank you. Thank you.

12 Thirdly, at Lines 102 to 136, you  
13 propose a modification to the therm ceiling contained  
14 in Rates 5 and 75. Are you there?

15 A I am.

16 Q Specifically, am I correct to say that you  
17 originally proposed that the ceiling be adjusted from  
18 250,000 therms to 1.5 million therms?

19 A That's correct.

20 Q And, subsequent, in your rebuttal  
21 testimony, you provided an alternative ceiling amount  
22 of 700,000 therms; is that correct?

1           A     It is correct.

2           Q     Have Vanguard Energy Services and Nicor Gas  
3     reached an agreement on this issue?

4           A     We have.

5           Q     And, specifically, have the parties agreed  
6     to expand the ceiling for Rates 5 and 75 to  
7     700,000 therms?

8           A     We have.

9           Q     And based on that agreement, is it your  
10    understanding there will be a decrease in revenues to  
11    Rates 4 and 74 and an increase in revenues to Rates 5  
12    and 75?

13          A     That's correct.

14          Q     And based on your understanding -- based on  
15    that understanding, you expect that there will be  
16    changes recognized in Nicor Gas' compliance filing;  
17    is that correct?

18          A     That's correct.

19          Q     Specifically, you do understand that the  
20    company will update its E costs to reflect the new  
21    number of eligible customers to be included in Rates  
22    5 and 75?

1           A     I do.

2           Q     And is it your further understanding that  
3     based on those changes, there will be a change  
4     proposed to the rates for Rates 4, 74, 5 and 75?

5           A     I do.

6           MR. CASEY: I have nothing further.

7                     Oh. I have no further questions. I  
8     would move for the admission of Nicor Gas Cross  
9     Exhibit No. 5.

10          JUDGE SAINSOT: Any objection?

11                    Hearing none, Mr. Casey, your motion  
12     is granted. Nicor Cross Exhibit 5 is admitted into  
13     evidence.

14                             (Whereupon, Nicor Cross  
15                             Exhibit No. 5 was  
16                             admitted into evidence  
17                             as of this date.)

18          JUDGE SAINSOT: I would request of -- before we  
19     go any further, you may have more on either side,  
20     both parties, when you write your post-trial briefs,  
21     to put in that brief that this issue is settled. And  
22     to the extent -- and it's been a long day, so don't

1 hold -- don't think that I'm -- I have a fixed idea  
2 in my mind about this or anything else right now.

3 But to the extent that this may impact  
4 other issues, if that's relevant -- I can tell by the  
5 look on your face, Mr. Casey, maybe it's not, that's  
6 fine -- you might include that, if it did. But it  
7 doesn't. I can tell. Okay.

8 MR. ROONEY: Your Honor, just -- what I was  
9 going to suggest is that given there's been  
10 resolution of a couple of other issues, too, we're  
11 probably going to propose circulating an updated  
12 draft outline to all the parties and then submit that  
13 to you in advance and then we can all work off that  
14 same outline. Because we have resolved a couple  
15 other issues as well.

16 JUDGE SAINOT: Hm-hmm. Are you talking about  
17 a prehearing memo or --

18 MR. ROONEY: Oh, no.

19 MR. CASEY: No.

20 MS. LIN: Outline.

21 MR. ROONEY: The outline we use for the  
22 prehearing memo is, I think, what the plan is to use



1       for the briefs.

2               JUDGE SAINSOT:   Sure.   Sure.

3               MR. ROONEY:   What we want to do is update the

4       outline to reflect moving some of the contested

5       issues to the uncontested section.

6               JUDGE SAINSOT:   Sure.   Sure.   I just wasn't

7       comprehending immediately how the outline would

8       change.   So I assumed it was something else.

9               MS. LIN:   Yeah, because literally some of the

10      sub parts would just disappear.

11              MR. ROONEY:   Uncontested, right.

12              JUDGE SAINSOT:   Okay.

13                      Now, anything further?

14              MR. WIER:   Nothing further, no.

15              JUDGE SAINSOT:   Anybody else?

16                      Okay.   Mr. Anderson, thanks very much.

17      You're excused.

18              THE WITNESS:   Thank you.

19              JUDGE SAINSOT:   Anything further before we

20      leave?

21              MR. SKEY:   I just have a question.

22                      In light of Judge Benn's keeping track

1 of all the exhibits, are you looking for any sort of  
2 further submission from the parties in terms of what  
3 exhibits were submitted?

4 I know that in some cases that occurs;  
5 in others, it does not. Do you have a preference on  
6 that? In terms of like an exhibit list.

7 JUDGE SAINSOT: No, no. We have the exhibit  
8 list. We should --

9 MR. SKEY: You don't want any further  
10 submissions of exhibits?

11 JUDGE SAINSOT: Right.

12 MS. LUSSON: Can I just ask one clarifying  
13 question of Counsel for Nicor and Vanguard Services.

14 In light of this new agreement or  
15 stipulation, I just wanted to have the parties  
16 clarify for the record that does not affect other  
17 rates proposed in this case for the other rate  
18 classes?

19 MR. CASEY: Well, I don't believe it is, but  
20 I'm not here to testify. So...

21 JUDGE SAINSOT: Okay.

22 Just as a reminder, when you do the

1 post-trial briefs, we'll need a brief statement of  
2 facts. And, again, it can just be a paragraph. It  
3 doesn't need to be anything fancy.

4 Anything else? Well, thank you all.  
5 This was great. You all did a really good job.  
6 Thank you.

7 MR. ROONEY: Your Honor, are you going to mark  
8 the record heard and taken?

9 JUDGE SAINSOT: Heard and taken, no because of  
10 that little situation that may arise.

11 MR. ROONEY: Okay. Thank you.

12 JUDGE SAINSOT: Right. So we'll do it later  
13 on.

14 (Whereupon, these were  
15 all the proceedings  
16 had on this date.)

17

18

19

20

21

22